BIBLIOTHECA POLITICA:

OR, AN

ENQUIRY

INTO THE

Antient Conſtitution

OF THE

ENGLISH GOVERNMENT,

With Reſpect to the juſt Extent of the REGAL POWER, and the Rights and Liberties of the SUBJECT.

Wherein all the Chief ARGUMENTS both for and againſt the LATE REVOLUTION, are Impartially Repreſented and Conſider'd.

In Fourteen DIALOGUES.

Collected out of the beſt AUTHORS, Antient and Modern.

By JAMES TYRRELL Eſq;

The SECOND EDITION.

LONDON,

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M. DCC. XXVII.

MVSEVM
BRITANNICVM

THE PREFACE

HAVING out of Curiosity, for some Years before, as well as since, the late wonderful and happy Revolution, carefully perus'd, for the Satisfaction of my own Conscience, all Treatises of any Value that have been publish'd concerning the Origin and Rights of Civil Government; as well of Monarchy as other kinds of it, and also concerning the antient Government and fundamental Constitutions of this Kingdom: I found it necessary, in order to the better retaining of what I had read, and making a more certain Judgment upon it, to write down the most considerable Arguments on both sides, as well of those who will have *Monarchy* to be *Jure Divino*, as of those who allow it *only* to *Government in general*; of those who maintain absolute Subjection, or *Passive-Obedience* as they call it, as well as of those who hold *Resistance* in some Cases to be necessary; of those that maintain our *Monarchy* to have been *limited* by the Constitution it self, and of those that suppose all our *Rights* and *Liberties*, nay, the very *Being of Parliaments*, to owe their Origin wholly to the gracious Concession and Favour of our former Kings.

Having made impartial Collections of this Nature, and shew'd them to some Persons of Judgment, they thought they might be of great Use for satisfying some Mens Doubts concerning lawful Obedience to their late Majesties King *William* and Queen *Mary*. These Gentlemen look'd upon it as the best and most ingenuous way of convincing the Scrupulous, to propose the Arguments fairly on both sides, without interposing my own Judgment; but leaving it to the intelligent and impartial Reader, to embrace that Side where he found the most rational and strongest Arguments.

This Task, tho troublesome enough, I was prevail'd with to undertake, not for the sake of Fame, but merely for the publick Good and Happiness of my Country.

Being also sensible that a Subject of this Importance deserv'd a great deal of pains, and to be handled in a more artificial Method than the old dry Scholastick Way of Objection and Solution; I thought it would prove more pleasant as well as profitable to the Reader, espe-

cially those of our young Nobility and Gentry, for whom I principally design'd this Undertaking, to digest what I had writ into Dialogues or Conversations, suppos'd to be held betwixt two intimate Friends, who, notwithstanding their different Principles in Politicks, had always maintain'd a strict and generous Correspondence. I was the more inclin'd to this Method, because I observ'd that writing of Controversies by way of Dialogue, according to true Rules, had obtain'd well among intelligent Readers; and because my Subjects are of a nice nature, and that my Collections contain strict Inquiries into the Principles laid down in the Writings of several Persons of great Reputation for Learning and Ingenuity.

I was sensible how invidious a Task it must prove to write on purpose against so many Great Men, and how troublesom and tedious it would be to my self, as well as to the Reader, to confute any Author Page by Page; which Method, I perceiv'd, had made Answers to Books very unacceptable to the World. And tho I grant that writing by way of Dialogue has likewise Objections and Difficulties, as being more diffusive, and taking up more time, where either the one or the other Disputant is apt to rove from the Subject; yet I make bold to affirm, that this may be in a great measure prevented by the Writer, if he keep close to the Question, and not start a fresh Hare till the old one is run down. So that a Man may make and answer Objections in as few Words this way, as by Polemical Discourses. And tho it be granted, that Matters of Form in Dialogues are more tedious, yet the Reader, as well as Traveller, will find, that the Pleasantness of the Road often makes amends for its being somewhat about.

Whether I have truly pursued the Rules of Dialogue, must be left to the Reader's Judgment; but I can justly affirm, that I have carefully avoided all bitter and reflecting Language on either side, having design'd these Discourses for *common Places of Argument*, and not Forms of Railing. I have also declin'd shewing my self a Party, or giving my own Opinion in any Question, and therefore have not made either of my Disputants the other's Convert; tho nothing is more easy in writing Dialogues as well as Romances, than to make the Knight-Errant always beat the Giant.

In all my Discourses I have consider'd and contracted the best Arguments I could find in the most considerable antient and modern Authors, either in *Latin* or *English*, especially in those that have writ on either side since the late Revolution. As for those in our own Language, wherever I conceiv'd any Author to speak so well, or to argue so closely, that to put it in other Words would make it worse; I have always put the Arguments of both the Disputants in their own Words: and because I would not act the Plagiary, have truly quoted the Book and Page from whence I took them. For other Authors, I hope none will take it ill, if I have sometimes made bold to contract their Arguments, without altering their Sense or Words further than by putting in or out an Expression to make the Stile run more smooth. I also desire them not to think that I write on purpose to confute them, since my Design is not to write against any Man's Opinions, as they are his, but only to examine them freely, in order to an impartial Discovery of the Truth. And since some of them have been perhaps too commonly and favourably received by our ordinary Gentry and Clergy, if any ingenious Person will take upon him farther

ther to assert or vindicate any Opinion here question'd by the one or the other Disputant, and will clearly and fairly shew me where any Argument might have been put more home, or any Objection more solidly answer'd; I shall, instead of taking it amiss, give him my thanks for his pains, and do here promise to insert all, or at least the Substance of his Arguments under their proper Heads with all due Acknowledgments: only I desire him, whoever he be, to forbear all harsh Reflections and coarse Language; otherwise he must pardon me if I only take notice of his Reasons, and neglect his Passions.

I hope no candid Reader will slight those Dialogues, which treat of Opinions that at present may seem to be of fashion, *viz. the Divine Right of Monarchy*, and Succession from the Patriarchal Power given by God to *Adam*; for every one remembers the time when our Pulpits and Presses would scarce suffer any other Doctrine to be preach'd or publish'd on those Subjects. It fares with some Political Opinions as with Fashions, which are never so generally receiv'd and worn, as when they have been in vogue at Court. Those Divines and Lawyers, who were the Inventors or new Vampers of them, commonly receiv'd the greatest Rewards and Preferments: so that as the Court-Taylors did with Fashions, they invented such Doctrines and Opinions as were most burdensom and uneasy to all sorts of People, except a few Great ones, who were to be Gainers by them.

I desire it may be observ'd, that however odd or unreasonable these Doctrines may seem to most Men now, yet certainly they must formerly have seem'd to carry a great Appearance of Truth, since they were able to captivate the Reason of the major part of both Houses of Convocation in the beginning of King *James* the First's Reign, when by several of their Canons they declar'd them to be the only sure Foundations of all Civil Authority, and of Obedience to it; as appears by the Treatise, call'd *Bishop* Overal's *Convocation-Book*. And tho neither King nor Parliament thought fit to give those Canons the Stamp of Civil Authority, and make them Law, yet this did not hinder several of the Learned Clergy and Laity from embracing those Opinions; such as Sir *Robert Filmer*, and his Vindicator Mr. *Bohun*, and the Reverend and Learned Bishop *Sanderson*, with divers others of Note: whose Arguments I have made use of and consider'd in some of these Dialogues, but with as little Reflection as possible, since I know what is due to the Memory of such Great and Worthy Persons. This was the reason why I only made use of the initial Letters of their Names, or the Titles of their Books, in the Margin; which are explain'd by an Index at the beginning of this Work, as they were at the beginning of each Dialogue in the first Edition: what is not so mark'd, I desire the Reader to look upon the Words, not the Sense, to be my own; for I don't pretend to be an Inventor of new Notions in Politicks, there being no Man more sensible than my self of that old *Latin* Sentence, *Nihil dictum quod non dictum prius.*

Tho the Title of the first Dialogue mentions no more than the discussing of the Question, whether Monarchy be of Divine Right, yet the natural Power of Fathers, Masters of Families, and Freemen, are distinctly treated of, and closely enquir'd into, as being the first Elements or Principles of all Civil Powers, as those alone out of which at first they could be regularly made: And tho I have made one of the Disputants argue pretty stiffly against the *Divine Right of Monarchy, and of Indefeasible Hereditary Succession to Crowns*; yet I de-

clare I am not what the World calls a *Republican* or *Commonwealth's-Man*, nor do I hereby design or desire Alterations in the Government either of Church or State, since none can admire our excellent Constitution more than my self: much less do I prefer an *Elective* to an *Hereditary* Succession to the Crown, for I justly esteem the latter to be the most excellent, if not the only means to prevent all Disputes and Civil Wars about *Succession*; and therefore is never to be departed from, unless when some *Natural* or *Moral* Disability in the Person, or other unavoidable Necessity, render it absolutely inconsistent with the publick Peace and Safety of the Kingdom.

Therefore as a Man may be truly devout without Superstition, which is a Corruption or Abuse of Religion; so I think a Subject may be truly Loyal and Obedient to his Prince, tho he has never heard of, or does not believe any *Divine Right of Monarchy* deriv'd from *Adam* and *Noah*; or of *Hereditary Succession*, from God's Promise, That *Cain* should rule over *Abel*. Nor have I any Aversion to Absolute Monarchy as such, could I be assur'd that Princes would be always as wise and as good as they ought to be, for I own that several Nations have never been more happy than under such Monarchs. The *Roman* Empire, for instance, never arrived to a greater height of Riches and Power, if we may believe Historians, than under *Nerva*, *Trajan*, and the two *Antonines*: So that the Fault is not in *Absolute Monarchy* as such, but in the general Corruption of human Nature, which rarely produces Persons of such Wisdom, Goodness, and other Abilities, as are requisite for so great a Trust.

I confess Subjects may be happy and contented enough, if they please, under any Form of Government, where the Governors are of equal Capacity and Honesty, and have a hearty Love and Concern for the common Good of their People; but where these are wanting, it is not mere Forms and empty Names that can make them so: Therefore I justly admire the Wisdom of the antient *German* and *Gothick* Nations, who prefer'd a *Limited* Monarchy to all other Forms of Government; as an excellent *Medium* between the Mischiefs of *Arbitrary Power*, and those Inconveniencies that attend Republicks, where either the common People or Nobility must govern.

I likewise hope, that tho I make one of my Disputants shew the Absurdity and fatal Consequences of Sir *Robert Filmer*'s Principles, yet the Reader will not from thence infer, that I pass an absolute Judgment against them; much less have I done this out of any prejudice to Sir *Robert*, with whom tho I was never acquainted, I honour his Memory, because his Writings shew him to have been a Person of genteel Learning, and very ingenious: But whether his Principles be destructive to the Fundamental Constitution of this Government, I submit to the Reader's impartial Judgment; who I hope will, without Attachment to Party or Faction, determine according to the Merits of the Cause, and observe the Apostle's Rule, to *try all things, and hold fast that which is good.* I beg the Reader likewise to believe, that tho under the Name of a *Freeman* I have argued against an Opinion now and lately much in vogue, *viz. That an absolute Irresistibility is an inseparable Prerogative of all Sovereign Powers, be they Monarchies or Commonwealths*; yet no Man more abhors all unnecessary Resistance or Rebellion against Supreme Magistrates, and is more for an absolute Submission by all particular Persons, whether publick or private, in case of the highest Injuries and Oppressions

done

done to themſelves alone, and where the common Good of the Community is not immediately concern'd: And this I own to be their Duty, not only out of a generous Regard to the Peace and Tranquillity of the Commonwealth, whereof they are Members, (and which ought not to be diſturb'd, to revenge or redreſs a few private Injuries) but alſo from the expreſs Command of God in the Holy Scripture, which expreſly forbids not only all Revenge, but even Self-Defence, whilſt the Supreme Powers act legally, tho perhaps contrary to the ſtrict Rules of Juſtice and Equity in ſuch particular Caſes. Yet for all this, I doubt whether thoſe Precepts do extend to all Reſiſtance whatever, *viz.* of any whole Nation or great Body of Men, whoſe Preſervation or Freedom from intolerable Slavery and Oppreſſion, may render it neceſſary for the Good of the Commonwealth, and is no other way to be procur'd but by a vigorous Reſiſtance, or elſe joining with ſome powerful Neighbours, who ſhall interpoſe for their Deliverance. So that if ſuch a Reſiſtance be ever lawful, it can be upon no leſs momentous an account, than that of a *General Invaſion* either of the Lives, Liberties, Religion, or Properties of a whole or major part of a Nation; as they are eſtabliſh'd by the Law of Nature, or the Fundamental Conſtitution of thoſe particular Governments where ſuch inſupportable Tyranny and Oppreſſions are then exerciſed. And if this be not lawful in ſuch extraordinary Caſes, it would ſeem as if God had prefer'd the *unjuſt Power* or Force, and the outward *Grandeur* of the *Governors*, before the *Good* and *Happineſs* of the *Governed*; which is contrary to the main End of all Civil Government, *viz.* the common Good and Happineſs of Mankind, even as thoſe who are againſt all Reſiſtance muſt allow.

But whether ſuch Reſiſtance be not in theſe Caſes a lawful, nay only Means for the Safeguard and Deliverance of ſuch oppreſs'd Nations; I leave it to the Judgment of the impartial Reader, upon the Peruſal of my Dialogues on this Subject.

For however criminal ſome have endeavour'd to render the Doctrine of Reſiſtance even in ſuch caſes, yet I muſt ſtill believe, till convinc'd of the contrary, that the Queſtion being only Moral or Political, and not about any Point of Faith or Law, the Affirmative may be ſafely maintain'd, without any Guilt of Hereſy or Treaſon.

I further deſire it may be obſerv'd, that tho in the Diſcourſes on this Subject I have made one of the Diſputants make uſe not only of the Arguments, but of the Expreſſions of two Learned Divines in ſome late Treatiſes on this Head; yet I did it not from any Deſign to write againſt them, or thoſe Opinions as theirs, ſince others made uſe of the ſame Arguments or Texts on the ſame View before them. But as it muſt be confeſs'd, that none have manag'd the Controverſy with better Argument and greater Eloquence, I hope they will not take it amiſs, if, out of a juſt Value to their Learning, I have put that part of the Controverſy in their Words, as the beſt I could meet with, and which I durſt not pretend to alter; but as for the Anſwers, I have given them in my own, or elſe in the Words of two late Writers, who undertook to anſwer what thoſe Divines had writ.

And ſince I don't take all that has been laid down on either ſide for unqueſtionable Demonſtrations, I hope neither Party will take it ill that I have fairly repreſented the ſtrongeſt and moſt plauſible Arguments on both ſides; for Truth will not look the worſe, or loſe

ground,

ground, if it appears in its true natural Dreſs againſt its Oppoſite, Error. But if a great deal of what has been ſaid, by Perſons too violent on either ſide, appear to be mere precarious Opinions, whoſe beſt Authority is from the great Names of thoſe that have broach'd them; I hope no indifferent Perſon will take it ill, if I endeavour to diſcover thoſe Miſtakes, ſince all Men are liable to Errors: and as none can be more ſenſible of this than my ſelf, ſo when either of thoſe Learned Perſons, or any other, ſhall convince me of weak or falſe Reaſonings, I promiſe to retract them with the firſt Opportunity.

As to my Diſcourſes upon the Supreme Legiſlative Power, and the Fundamental Conſtitution of our Government, together with the Antiquity of Great Councils or Parliaments; and whether they always conſiſted of Biſhops, Barons or Temporal Lords, and Commons; is a Queſtion to be decided only from the Hiſtories and Laws of the Nation. And I dare aſſure the Reader, that I have advanc'd nothing upon it on either ſide, but what I have produc'd good Authorities for, either from the Hiſtories and Governments of our own or neighbouring Nations, or from the Collections of our *Engliſh Saxon* Laws, and antient as well as modern Writers upon our Laws; and laſtly, from our Statutes ſince the reputed Conqueſt, without omitting any Authority that I judged material to be urged on either part.

As for thoſe Parliamentary Records here quoted, they are either ſuch as have been already printed from the Rolls in the Tower, or other Offices at *Weſtminſter*, and ſo are allow'd for authentick, or elſe are ſuch as have not yet been made publick; for the Truth of which, the Reader may ſearch the Records themſelves, if he have any Diſtruſt that I have not quoted them fairly. And I can farther aſſure the Reader, from better Judgments than my own, that he will find more here than ever was yet publiſh'd at once, or perhaps at all, upon thoſe important Subjects.

As to the ſixth Dialogue, I muſt own the Subject of it to be one of the hardeſt and moſt important, tho perhaps in the Judgment of ſome, the dryeſt and moſt unpleaſant part of my Task, *viz.* to adjuſt who were antiently the conſtituent Parts or Orders of Men that made up our Legiſlative Aſſemblies. That the Biſhops, Abbots, Priors, Earls, and chief Thanes or Barons, were principal Members, is granted by all Parties; but whether there were from the very Original of theſe Great Councils, or till long after the coming in of the *Normans*, any Repreſentatives for the Commons, as we now call them, in diſtinction from the Lords Spiritual and Temporal, is made a queſtion. The firſt who raiſed the Doubt, for ought I can find, was *Polydore Virgil*, an *Italian*, who wrote the Hiſtory of *England* in the ſixteenth Century, and it hath been continued by ſome Antiquaries ſince that time: tho the firſt who undertook to prove the contrary, was the Author of a Treatiſe publiſh'd by *James Howel* in the *Cottoni Poſthuma*, under the Name of Sir *Robert Cotton*, about 1654. And after him, this Notion of the Biſhops, Lords, and other Tenants *in capite*, being the ſole Repreſentative for the whole Nation in thoſe Councils, was next printed in the ſecond part of Sir *Henry Spelman*'s Gloſſary, *Tit. Parliamentum*; where King *John*'s Charter is brought as the main Argument to prove that Aſſertion. The next who appeared in Print on this Subject was Sir *William Dugdale* in his *Origines Juridiciales*: who, tho he tranſcrib'd the ſame Notion and Arguments from *Spelman*'s

man's Gloſſary; yet he allows our Commons to have been always ſome way repreſented in Parliament, tho not by Members of their own chuſing: notwithſtanding which, he agrees with the Author of the Paſſage in the Gloſſary, that the Commons firſt began by Rebellion in the 49th of *Henry* III.

Which Opinions being look'd upon not only as novel and erroneous, but dangerous to the fundamental Rights and Liberties of the People of this Nation, they were oppos'd by *William Petit* Eſq; in his Treatiſe, intitled, *The Rights of the Commons of* England *aſſerted*, &c. He was ſeconded by the Author of the Treatiſe, call'd, *Jani Anglorum facies nova*. Soon after both thoſe Books were animadverted upon by Dr. *Brady*, in two Editions of his Anſwers to them; but the Rights of the Commons were again vindicated by the Author of *Jani Anglorum*, &c. in another Treatiſe, intitled, *Jus Anglorum ab antiquo*, which has not yet been anſwer'd.

I have been the more particular in my Account of thoſe Authors, becauſe this Controverſy being largely debated in them, I thought it proper, for ſaving the trouble of reading ſo many Books, to reduce all the material Arguments and Authorities made uſe of by both Parties, in this weighty Controverſy, into this and the two following Dialogues; and have, as near as I could, confin'd my ſelf to the words of thoſe Authors, as will appear by the Quotations in the Margin.

I muſt own, that having had a long and familiar Acquaintance with Mr. *Petit*, he furniſh'd me with divers Authorities both in Manuſcript and Print, not hitherto taken notice of by any Writer on this Subject. And had Dr. *Brady*, or any of his Friends, thought fit to communicate their Objections againſt any thing I have writ, I ſhould have fairly publiſh'd them, with ſuch Anſwers as the Caſe might have requir'd.

I hope the Reader will pardon me, if I ſeem too prolix in the Interpretation of divers Words and Phraſes, us'd by Dr. *Brady* and his Opponents in a quite different Senſe from our antient Hiſtorians, Records, and Statutes; for if the various Uſe and equivocal Meanings of thoſe Expreſſions be truly ſtated and laid open, according to the ſeveral Ages in which thoſe Authors liv'd, or ſuch Laws were made, I reckon this great Diſpute will ſoon be at an end.

I think it needleſs to inſiſt upon the Nature of the other Dialogues. The Deſign of them is obvious, from the ſummary Account of the Subject prefix'd to them; ſo that all I ſhall add, is, that in each of them, as well as the former, there are many incident Queſtions handled of Law, Hiſtory, and Divinity, that relate naturally to the Subject. The Reader will eaſily find this, by conſulting the large Alphabetical Index annex'd to this Edition, which makes it a compleat Common-place Book for underſtanding our Conſtitution: a thing hitherto very much wanted, and not to be met with, but by conſulting multitudes of Books, at no ſmall Expence both of Mony and Time.

I can aſſure the Reader, that all the Authorities here made uſe of from Hiſtorians and Records, are truly cited, without leaving out or concealing any thing that I thought made for or againſt either Opinion. And as for the Records, they are either ſuch as having been ſufficiently try'd, have paſs'd for authentick betwixt Dr. *Brady* and his Antagoniſts, or elſe ſuch as I my ſelf have ſeen and examin'd, and conſider'd the Purport of them carefully. If any ſuſpect the contra-

ry, I have given them a fair Opportunity, by my Quotations, to examine the Truth of it themſelves; ſo that by weighing and comparing Hiſtorian with Hiſtorian, and Record with Record, and ſometimes both together, as the Subject-Matter requires, they may be able to make a right and impartial Judgment of the whole.

I hope that the Arguments, in all the following Diſcourſes, will prove ſo plain and convincing to careful and unprejudic'd Readers, that they may as eaſily diſcover the Truth, as an honeſt and unbiaſs'd Jury-Man can, at a Trial, judge on which ſide the Right and Juſtice of the Cauſe inclines, upon the bare hearing of Evidence on both ſides, even before the Court hath ſumm'd it up. But on which ſide ſoever the Reader brings in his Verdict, I heartily wiſh that God may direct his Mind, and guide his Judgment to find out and embrace the Truth; which as it was the only end of my writing at firſt, is now the end of republiſhing theſe Dialogues: which, ſince the principal Subject of them has again ſo lately been controverted, not only by the Pen, but by the Sword, 'tis hop'd may be of uſe to ſettle the Minds of People, who to their Coſt have been ſo frequently miſled, becauſe they did not underſtand our Conſtitution.

An ALPHABETICAL CATALOGUE of the LETTERS, by which the Names and Books of Authors are denoted in the Margin of the following DIALOGUES.

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B. A. J. Dr. *Brady's Animadversions* on *Jani Anglorum facies nova.*
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B. C. P. *Bohun's Conclusion* to Sir *Robert Filmer's Patriarcha.*
B. D. F. *Bohun's Defence* of Sir *Robert Filmer.*
B. G. Dr. *Brady's Glossary* at the end of his *Answer* to *Petit's antient Rights of the Commons.*
B. P. H. Dr. *Brady's Preface* to his *History.*
B. P. P. *Bohun's Preface* to *Patriarcha.*
B. S. P. P. Bishop *Sanderson's Preface* to the *Power of the Prince.*
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F. A. M. M. Sir *Robert Filmer's Anarchy of Mix'd or Limited Monarchy.*
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F. O. G. Sir *Robert Filmer's Observations on Forms of Government.*
F. O. G. Sir *Robert Filmer's Observations on* Grotius De Jure Belli & Pacis.
F. P. Sir *Robert Filmer's Patriarcha.*
F. P. O. Sir *Robert Filmer's Preface* to *Observations* on *Aristotle.*
F. P. O. Sir *Robert Filmer's Preface* to his *Political Observations.*
G. J. B. *Grotius de Jure Belli & Pacis.*
H. D. L. *Harmony of Divine Law.*
H. J. Dr. *Hickes's Jovian.*
H. P. O. *History* of *Passive-Obedience.*
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J. A. A. *Jus Anglorum ab Antiquo.*
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L. O. *L'Estrange's Observators.*
P. J. N. *Puffendorf de Jure Naturæ & Gentium.*
P. N. M. *Patriarcha non Monarcha.*
P. P. R. C. *Petit's Preface* to the *Rights of the Commons of* England *asserted.*
P. R. *Plato Redivivus.*

P. R. C.

P. R. C. *Petit's Antient Rights of the Commons of* England *asserted.*
R. H. C. *Rushworth's Historical Collections.*
S. C. R. Dr. *Sherlock's Case of Resistance.*
S. P. P. Bishop *Sanderson's Preface* to Archbishop *Usher's Power of the Prince.*
T. T. G. *Two Treatises of Government.*
V. J. R. *Vindiciæ Juris Regii.*
U. S. A. S. Mr. *Dudley Diggs's Unlawfulness of Subjects taking up Arms against their Sovereign,* Edit. 1643.

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ERRATA.

PAGE 39. Line. 24. for *me* read *be*. P. 54. l. 25. for *enjoin'd* read *enjoy'd*. P. 92. l. 25. for *Belkrap* read *Belknap*. P. 108. l. 23. for *Winzerus* read *Winzetus*. P. 181. l. 53. for *Salves* r. *Slaves*. *The Page which shou'd be* 186, *is* 191. P. 246. l. 48. for *effluxiam* read *effluxam*. *At the bottom of p.* 253. for *M. r. F.* id. *the top of* p. 254. P. 280. l. 5. *from the bottom*, for *Oecomi* r. *Oeconomi*. Ib. l. 14. *from the bottom*, for *Rediplematica*, r. *Re Diplematica*. P. 283. l. 2. *from the bottom*, for *Optimatis* r. *Optimates*. P. 285. l. ult. for *Lords* r. *Laws*. P. 309. l. 21. *from the bottom*, for *Comines* r. *Homines*. P. 314. l. 5. *from the bottom*, for *thoguh* r. *tho*. P. 317. l. 10. for *Principium* r. *Principum*. P. 338. l. 24. *from the bottom*, for *hough* r. *tho*. P. 369. l. 10. *from the bottom*, dele *In* before *Inquilini*. P. 386. l. 6. for *pervaded* r. *persuaded*. P. 464. l. 24. *from the bottom*, for *accountable* r. *unaccountable*. P. 475. l. 21. *from the bottom*, for *Medioque* r. *Mediaque*. P. 507. l. 5. for *the* r. *they*. P. 513. l. 18. *from the bottom*, for *Rex* r. *Lex*. P. 576. l. 11. for *State* r. *fate*. P. 629. l. 5. for *declated* r. *declared*.

Bibliotheca Politica:

OR AN

ENQUIRY

INTO THE

ANTIENT CONSTITUTION

OF THE

English Government.

DIALOGUE I.

Whether Monarchy be Jure Divino.

BETWEEN

Mr. FREEMAN, a Gentleman; and Mr. MEANWELL, a Civil Lawyer.

Supposed to be immediately upon the late King JAMES's first Departure.

F. GOOD morrow, Sir: What! at your Study thus early this Morning.

M. That is no wonder, if you were acquainted with my Hours: But pray, Sir, may I not likewise ask you what extraordinary Occasion brings you out of your Lodgings so much sooner than your ordinary Time?

F. Why, Sir, I'll tell you. Being awake very early this Morning, and not able to sleep for thinking on the great Change that might happen, let either the King or Prince get the better; and hearing some odd Rumours last Night of the King's Intentions to go away: I was resolved to get up, and go to the Coffee-house, to hear what News; where I had scarce sat down, before a Gentleman comes in from *Whitehall*, and brings us a certain Account, that the King withdrew himself this Morning between three and four of the Clock, no Body knows whither, (tho' most believe he is gone after the Queen into *France*) which I thought would be so surprising (I will not say welcome) to you, that being so near your Lodgings, I thought it would

be worth while to ſtep up, and tell you of it, and take your Thoughts of this great (and I hope happy) Change, which ſo great a Revolution is likely to produce in this Nation.

M. I thank you, Sir, for your Kindneſs, tho' it is not half an Hour ago, that one I employ in ſome Buſineſs relating to a Client of mine, came hither, and gave me the ſame account, tho' it was no great Surprize to me; for ever ſince *Sunday*, that the King ſent the Queen and Prince away, I believ'd that he gave the Game for loſt.

F. I muſt confeſs I was of another Mind, and thought, that when he had ſecured the Queen and Child, he would have had one Bruſh with the Prince before he could have got to *London*; and if he had had the worſt of it, he could have but gone away at laſt. But to leap away on this manner, and to loſe three Kingdoms without ever ſtriking one ſtroke, it is not, I confeſs, ſuitable to that high Character his Admirers have always had of his Courage and Conduct.

M. Alas! good King: What would you have him do? On whom could he rely on, when ſome of his near Relations and divers of thoſe whom he had raiſed almoſt from nothing, had deſerted him? How could he then truſt an Army of Mercenaries, who being moſt of them but the Dregs of the People, would, it is likely, rather have delivered him up to the Prince, than have ventured their Lives for him.

F. What you have ſaid concerning his Majeſty's Relations and Confidents deſerting him, makes rather againſt than for the King's Cauſe; ſince it cannot be ſuppoſed they would have left a Prince to whom they were ſo much obliged, to join themſelves with his Enemy, from whom they had no reaſon to expect greater Advantages than they had already; unleſs they had been ſatisfied in their Conſciences, that the Proteſtant Religion eſtabliſh'd in theſe Nations, and alſo our Civil Rights and Liberties, were in imminent danger of being utterly loſt and deſtroyed. And tho' I grant that ſome of the King's Officers and Soldiers went over to the Prince; yet, conſidering how few they were that did ſo, not being (as I am credibly informed) above ſeven or eight hundred Men at the moſt, and what great Numbers of Men he had left with him; he might, methinks, have turned out thoſe Officers he ſuſpected, and put others in their rooms, who would have engaged to live and die with him; and if this would not have done, he might have ſent thoſe Regiments he moſt ſuſpected back to *London*: And then reckoning the *Scotch* and *Iriſh* Forces that came lately over, beſides the Papiſts he had in his Army, and thoſe who, having more Courage than Conſcience, could never expect to fight for a Prince, who would pay them better: I am confident (if this had been done) he might, after the going over of thoſe few Troops, have made up as good, if not a better Army than the Prince's; and ſo need not have ſcampered laſt Week from *Salisbury* in that haſte he did, whilſt the Enemy was near fifty Miles off. But as it is, I am very well ſatisfied with all that hath happen'd in this great Revolution, and convinced of the Truth of that old Saying, *Quos perdere vult Jupiter, dementat prius.*

M. So far I go along with you, that God doth often make uſe of the Wickedneſs and Treachery of Men, to bring his great Deſigns about; but whether God hath ordained this great Revolution, as you call it, for a Deliverance or Puniſhment to this Nation, I am yet in doubt: For if you pleaſe to conſider how much thoſe two Cauſes have contributed to this turn of Affairs, I ſuppoſe, if you argue according to my Principles, we muſt own, that tho' this Change hath happen'd by God's permiſſive Providence (as all things elſe, tho' never ſo ill) yet whether he doth approve of all that hath been done to procure it, I much doubt; ſince if divers of our Nobility, with ſome of our Clergy, had not quitted their Doctrines of Paſſive Obedience and Non-Reſiſtance, ſo long owned by the Church of *England*, this Revolution could not have happen'd at all, or at leaſt not ſo ſuddenly, as it did: So that indeed I muſt confeſs, I am not only grieved at his Majeſty's hard Fortune, but alſo ſtand amazed, and cannot but reflect with wonder on the ſtrange Viciſſitude of worldly Affairs, to ſee a Great King, who but laſt Week commanded a powerful Army of more than forty thouſand Men, forced out of his Throne, and made to fly his Kingdom, by a Prince that did not bring half that Number into the Field. And who can ſufficiently bewail the King's Misfortunes, who hath been at once betrayed by the ill Advice of his Counſellors, the Treachery of his Friends, and the Cowardice of his Soldiers?

F. Methinks, Sir, there is no ſuch great Cauſe of Wonder, much leſs of Concern in all this: For who can much admire that a Prince ſhould be thus uſed, who had not only provok'd a powerful Enemy to invade him from abroad, but (by induſtriouſly labouring to introduce Popery and Arbitrary Government at Home) had loſt the Hearts of almoſt all, except his Popiſh Subjects; inſomuch that many of his own Soldiers were ſo terrified with the Thoughts of being diſcarded (like the Proteſtant Army in *Ireland*) to make room for *Iriſh* and *French* Papiſts, that they had very little Courage to fight, when they ſaw Caſhiering was the beſt Reward they could expect, if they proved victorious. And who can much pity a Prince, who would rather loſe the Affections of his People, than diſpleaſe a few Prieſts and Jeſuits: So that if he ſuffers, he may thank himſelf; it not being Religion, but Superſtition which brought this Misfortune upon him. Since the King having got a Prince of *Wales*, and (as it is highly ſuſpected) joined himſelf in a ſtrict League with *France* for the Extirpation of Hereticks, it laid an abſolute Neceſſity upon the Prince of *Orange* to come over, that, by the Aſſiſtance of the States of *Holland*, he might not only relieve us, but vindicate his own, and her Royal Highneſs his Princeſs's Right to the Succeſſion, and ſecure his Country from a dangerous and powerful Invaſion, which it was threatned with both by Sea and Land, whenever the Kings of *France* and *England* ſhould be at leiſure to join their Forces, to make War upon them; which you know all *Europe* hath expected for above theſe two Years laſt paſt.

M. Theſe things were ſomewhat, if they could be proved; but indeed, to deal freely with you, I look upon this League, and the Story of the ſuppoſititious Birth of the Prince of *Wales*, as meer Calumnies caſt out by wicked and crafty Men to render the King more odious to his People.

F. Nay, Sir, you don't hear me poſitively affirm either the one or the other, ſince I grant they are not yet made out; but whoſoever will conſider all the Circumſtances of the Birth of this Child, cannot but be ſtrongly inclined to believe it an Impoſtor, notwithſtanding all the Depoſitions that are taken to the contrary. And as for the *French* League, you may be ſure, if there be any ſuch thing, it is kept very private; and yet I muſt tell you there are very high and violent Preſumptions to believe it true; or elſe why ſhould the King of *France*, in a late Memorial to the Pope, *complain that his Holineſs, by oppoſing his Intereſt in* Europe, *had hindred him in thoſe great Deſigns he had for the Extirpation of Hereſie?* by which he muſt ſurely intend *England* or *Holland*; Proteſtantiſm being ſufficiently expelled out of his own Country already. And he could not do it in either of the other without the Conſent and Aſſiſtance of his Brother the King of *England*. Or to what purpoſe ſhould the King of *England* join with *France* to ruin *Holland*, and his own Son-in-Law into the Bargain, but to make a War meerly for Religion; ſince neither the *Dutch*, nor the Prince their Stadt-holder, gave him, 'till now, any juſt Provocation?

M. Well, however, theſe are but bare Suſpicions and Preſumptions, at moſt, and not Proofs; and therefore in a doubtful Matter, as this is, if we ought to judge favourably of the Actions of others, much more of Princes, whoſe Councils and Actions, though private, yet are ſtill expoſed to the Cenſure and Calumnies of their Enemies; and therefore, I hope, you will not blame me, if I freely confeſs, that I am deeply concerned to ſee an innocent and miſled King forced to ſeek his Bread in a foreign Land; and the more, ſince many of the Nobility, Gentry, and common People, have contributed ſo much to it, by taking up Arms againſt him; and that ſo great a part of his own Army, and Officers, ſhould, contrary to their Allegiance and Truſt repoſed in them, run over to the Enemy. Nay, that ſome of our Biſhops and Clergy-men ſhould, contrary to the ſo often acknowledged Doctrines of Paſſive-Obedience, and Non-Reſiſtance, not only countenance, but be likewiſe active in ſuch deſperate Undertakings, and this in direct oppoſition to the known Laws of God, and this Kingdom; which muſt needs make our Church a Scorn to our Enemies the Papiſts, and a Shame and Reproach to all Proteſtant Churches abroad, and render the People of *England* odious to all the Crowned Heads in *Europe*.

F. Well, Sir, I ſee you are very warm, and I hope more than the Cauſe deſerves. You may judge as favourably of the King's Proceedings, and as hardly of the Actions of the Nobility, Gentry, Clergy and People in this Matter as you pleaſe. But yet I think I can make it as clear as the Day, that they have done

nothing by joining in Arms with the Prince of *Orange*, but what is justifiable by the Principles of Self-preservation, the Fundamental Constitutions of the Government, and a just Zeal for their Religion and Civil Liberties, as they ſtand ſecured by our Laws; unleſs you would give the King a Power of making us Papiſts, and Slaves, whenever he pleaſed. But as for your Doctrine of an abſolute *Obedience without Reſerve*, and the Divine Right of Monarchy and Succeſſion, you need not be much concerned whether the Papiſts laugh at you or no, ſince there are very few of them (if any) who are ſuch Fools themſelves as to believe ſuch futilous Opinions. But indeed they have more reaſon to laugh at you whilſt you maintain, than when you quit them; ſince as they have only rendered you a fit Object of their Scorn, ſo they would have made you but a more eaſie Sacrifice to their Malice. For what can Thieves deſire more, than that thoſe they deſign to rob, ſhould think it unlawful to reſiſt them? And what could the Papiſts have wiſh'd for more, than that our Hands being fetter'd by this Doctrine of an indefinite Paſſive-Obedience, our Lives, Religion and Liberties ſhould lie at their Mercy? Which how long we ſhould have enjoyed, whenever they thought themſelves ſtrong enough to take them away, the late cruel Perſecutions, and Extirpations of the Proteſtants in *France*, *Savoy*, *Hungary*, and other Places, have proved but too fatal Examples; and therefore no wonder (let your high-flown Church-men write or preach what they pleaſe) if the Body of the Nobility, Gentry and People of *England* could never be perſuaded to ſwallow Doctrines ſo fatal to their Religion, and deſtructive to their Civil Rights and Liberties both as Men and Chriſtians.

And as for the Antiquity of theſe Doctrines, I think they are ſo far from being the ancient Tenets of the Church of *England*, that they are neither to be found in its Catechiſm, Thirty nine Articles, or Book of Homilies, taken in their true Senſe and Meaning; though indeed there is ſomething that may tend that way in ſome of the late Church Canons about fifty Years ago; but I do not look upon them as the ancient eſtabliſh'd Doctrine of our Church, becauſe theſe Canons are not confirmed, but condemned by two Acts of Parliaments, and conſequently never legally eſtabliſhed as they ought to be by the publick Sanction of the King and Nation. Our old Queen *Elizabeth*'s Divines, ſuch as Biſhop *Bilſon* and Mr. *Hooker*, being wholly ignorant of theſe Doctrines, nay, teaching in ſeveral Places of their Writings the quite contrary. Nor was this Doctrine of abſolute Subjection, and Non-Reſiſtance ever generally maintain'd, until about the middle of King *James*'s Reign, when ſome Court Biſhops and Divines began to make new Diſcoveries in Politicks as well as Divinity; and did by their Preaching and Writings affirm, that *the King had an abſolute Power over Men's Eſtates*, ſo that it was unlawful in any caſe to diſobey or reſiſt his perſonal Commands, if they were not directly contrary to the Law of God; as may appear by Dr. *Harſnet*, then Biſhop of *Chicheſter*, his Sermon upon this Text, *Give unto* Cæſar *the things that are* Cæſar's; wherein he maintained, *That all the Subjects Goods and Money were* Cæſar's, that is, the King's, and therefore were not to be denied him if he demanded them for the publick uſe; which Sermon (though ordered by the Lords and Commons to be burnt by the Hangman) yet was ſo grateful to the Court, that he was ſo far from being out of Favour for it, that he was, not long after, tranſlated to *Norwich*, and from thence to the Archbiſhoprick of *York*. So likewiſe about the beginning of King *Charles* I. Dr. *Manwaring* preached before him; the Subſtance of whoſe Sermon was ſomewhat higher than the former, (*viz.*) *That the King was not bound by the Laws of the Land, not to impoſe Taxes or Subſidies without the Conſent of Parliament, and that when they were ſo impoſed, the Subjects were obliged in Conſcience, and upon pain of Damnation, to pay them; which if they refuſed to do, they were guilty of Diſloyalty and Rebellion.* For which Sermon he was impeach'd by the Commons in Parliament 4 *Car.* I. and thereupon ſentenced by the Houſe of Lords, to be diſabled to hold or receive any Eccleſiaſtical Living, or Secular Office whatever, and alſo to be impriſoned and fined a Thouſand Pounds. Notwithſtanding all which, we find him preſently after the Parliament was diſſolved, not only at liberty, but alſo preſented by the King to a rich Benefice in *Eſſex*, and not long after made Biſhop of *St. David*'s. So likewiſe one Dr. *Sibthorp* about the ſame time preached an Aſſize-Sermon at *Northampton*, on *Rom.* 13. 7. wherein he maintained much the like Doctrines, as, *That it was the King alone that made the Laws, and that nothing could excuſe from an*

Vide Bilſon *of Chriſtian Subjection. Edit.* 1586. *p.* 279, 280.

Hooker's *Eccleſiaſ. Policy, L.* 1. *p.* 11.

R. H. C. p. 605.

Ibid. 635.

active Obedience to his Commands, but what is against the Law of God and Nature: And that Kings had Power to lay Pole-Money upon their Subjects Heads. But this much I have read, that this Sermon was licenſed by Dr. *Laud*, then Biſhop of St. *David*'s, becauſe Archbiſhop *Abbot* had refuſed to do it as contrary to Law, for which he was very much frowned upon at Court; and it is ſuppoſed to have been one of the main Cauſes of his Suſpenſion from his Arch-Epiſcopal Juriſdiction, which not long after happened. But as for this *Sibthorp*, though he lived long after, (even 'till the King's Return) yet being (as Archbiſhop *Abbot* deſcribes him) a Man of but ſmall Parts or Learning, I cannot learn that he was ever preferr'd higher than the Parſonage of *Brackley*, and another in *Northamptonſhire*, whoſe Name I have forgot.

Vide Archbp. Abbot's Narrative, R. H. C. p. 434.

But I find a new Doctrine broach'd by ſome modern Biſhops and Divines about the middle of the Reign of King *James* the Firſt, That Monarchy was of *Divine Right, or Inſtitution at leaſt*; ſo that any other Government was ſcarce warrantable or lawful: And of this new Sect we muſt more eſpecially take notice of Sir *R. F.* who hath written ſeveral Treatiſes to prove this Doctrine, and which is worſe, *That all Monarchs being abſolute by Divine Inſtitution, they cannot be limited or obliged either by Oaths, Laws or Contracts with their People, farther than they themſelves ſhall think fit, or conſiſtent with their ſuppoſed Prerogatives; of which they only are to be the ſole Judges.* So that whoever will but conſider from the Reign of our four laſt Kings, what ſtrong Inclinations they had to render themſelves abſolute, and that few Divines, or Common, or Civil Lawyers were preferr'd in their Reigns to any conſiderable Place, either in Church or State, who did not maintain theſe new Opinions both on the Bench and in the Pulpit: You need not wonder when the Stream of Court Preferment ran ſo ſtrong that way, if ſo many were carried away with it; ſince it was but to expoſe themſelves to certain Miſery, if not to utter Ruin, to oppoſe it. All who offered by ſpeaking or writing to maintain the contrary, being branded with the odious Names of Puritans, Commonwealths-men, Whigs, *&c.* ſome of whom you may remember were not long ſince impriſoned, fined, nay, whip'd for ſo doing. So that it was no wonder if there were but very few to be found who durſt with ſo great hazard ſpeak what they thought; nor could any thing, but the imminent Danger upon our Laws, Religion and Properties, proceeding from the King's illegal Practices, have opened the Eyes of a great many Noblemen, Gentlemen and Clergy, who, contrary to the Opinions ſo much lately in vogue, did generouſly venture both their Lives and Eſtates, to join their Arms with the Prince of *Orange* againſt the King's unjuſt and violent Proceedings.

F. P. c. 3. §. 7, 8.

See Cowel's *Interpreter. Titles King, Parliament, Prerogative.*

M. I do not doubt, notwithſtanding all you have ſaid, to prove before I have done, theſe Doctrines of Non-Reſiſtance, and of the Divine Inſtitution of Monarchy, to be moſt conſonant to the Word of God, and to the Doctrine of the Primitive Church, and alſo to that of our Reformed Church of *England*. Nor were thoſe Divines you mention in King *James* the Firſt's Time, the Authors or Inventers of theſe Doctrines which were publickly received, and decreed by both Houſes of that Convocation which began in the firſt Year of King *James*, and continued 'till the Year 1610, as appears by divers Manuſcript Copies of the Acts or Decrees of this Convocation, the Original of which was lately in the Library founded by Dr. *Cozins*, late Biſhop of *Durham*, beſides a very * fair Copy, now to be ſeen in the Archbiſhop's Library at *Lambeth*: Which if you pleaſe to peruſe, you may be quickly ſatisfied, that the Church of *England* (long before ever Sir *R. F.* writ thoſe Treatiſes you mention) held that Civil Power was given by God to *Adam* and *Noah*, and their Deſcendants; as alſo that abſolute Subjection and Obedience was due to all Sovereign Powers, without any Reſiſtance; as claiming under thoſe Original Charters: Theſe Doctrines being there fully and plainly laid down and aſſerted, as the Doctrines of our Church. So that you deal very unjuſtly with the Memory of thoſe Divines, as alſo of Sir *R. F.* to make them the firſt Broachers of it; whereas you may find that it was the Opinion of the whole Convocation, for many Years before ever thoſe Divines, or that Gentleman began to preach, or write upon this Subject. Nor were theſe the only Men who maintained theſe Principles; but Archbiſhop *Uſher*, and Biſhop *Sanderſon* (whom I ſuppoſe you will not reckon among your flattering Court Biſhops) have as learnedly and fully aſſerted thoſe Doctrines, you ſo much condemn, as any of that Party you find fault with, and have very well

* *This is ſince printed under the Title of Biſhop* Overal's *Convocation-Book.*

proved

proved all Reſiſtance of the Supreme Powers to be unlawful, not only in abſolute but limited Monarchies. Of the Truth of which you may ſufficiently ſatisfy yourſelf, if you will but take the Pains to read the Learned and Elaborate Treatiſes written by thoſe good Biſhops, (*viz.*) The Lord Primate *Uſher's* Power of the Prince, and Obedience of the Subject, and the Biſhop of *Lincoln's* Preface before it; as alſo the ſaid Biſhop's Treatiſe *de Juramento*, written whilſt he was Doctor of the Chair in *Oxford*.

F. I muſt beg your pardon, Sir, if I have never yet ſeen or heard of that Convocation Book you mention, much leſs of the Opinions therein contained; ſince there is no mention made of their Proceedings, in any Hiſtory or Record of thoſe Times either Eccleſiaſtical or Civil, as I know of. But this much I am certain of; that theſe Determinations or Decrees you mention, (call them which you pleaſe) never received the Royal Aſſent, much leſs the Confirmation of the King and Parliament, one of which (if not both) is certainly requiſite to make any opinion either in Doctrine or Diſcipline to be received by us Lay-men for the Doctrine of the Church of *England*, otherwiſe the Canons made in 1640 would oblige us in Conſcience, tho' they ſtand at this day *condemned* by Act of Parliament: So that however, even according to your own Principles, you cannot urge this Book as the Authoritative Doctrine of the Church of *England*, unleſs their Determinations had received the Royal Aſſent; which you yourſelf do not affirm they had; for you very well know that, as in Civil Laws, no Bill is any more than waſte Parchment if once the King had refuſed to give his Royal Aſſent to it, ſo likewiſe in Spiritual or Eccleſiaſtical Matters, I think no Decrees or Determinations of Convocations are to be received, as binding either in points of Faith or Manners by us Lay-men, till they have received the Confirmation of the King, and the two Houſes of Parliament: Or otherwiſe the Conſequence would be, that if the King, who hath the Nomination of all the Biſhopricks and Deaneries, as alſo of moſt of the great Prebendaries in *England*, of which the Convocation chiefly conſiſts, ſhould nominate ſuch Men into thoſe Places, which would agree with him to alter the preſent eſtabliſh'd Reformed Religion and Government, and to bring in Popery or Arbitrary Power, the whole Kingdom would be obliged in Conſcience to embrace it, or at leaſt to ſubmit without any contradiction to thoſe Canons the King and Convocation ſhould thus agree to make; which of how fatal a Conſequence it might prove to the Reformed Religion in this Kingdom, this King's Choice of Biſhops and Deans, ſuch as he thought moſt fit for his turn, would have taught us when it had been too late.

M. You very much miſtake me, Sir, if you believe that I urge the Authority of this Book to you, as containing any Eccleſiaſtical Canons, which I grant muſt have the Royal Aſſent; but whether that of the two Houſes of Parliament, I very much queſtion; ſince the King without the Parliament is Head of the Church, and divers Canons made under Queen *Elizabeth*, and King *James*, are good in Law at this day, tho' they were never confirmed by Parliament. But I only urge the Authority of this Book to you, to let you ſee that theſe Doctrines are more Ancient than the time you preſcribe; and alſo that the major part of the Biſhops, and Clergy of the Church of *England*, held theſe Doctrines which you ſo much condemn, long before thoſe Court Biſhops or Divines you mention, medled with this Controverſy; and I ſuppoſe we may as well quote ſuch a Convocation Book, as a Teſtimony of their Senſe upon theſe Subjects, as we do the *French*, *Helvetian*, or any other Proteſtant Churches Confeſſions of Faith, drawn up and paſſed in Synod of their Divines, tho' without any Confirmation of the Civil Power.

F. If you urge this Convocation Book only as a Teſtimony, and not Authority, I ſhall not contend any farther about it: But then let me tell you, that if the Canons or Decrees of a Convocation, tho' never ſo much confirmed by King and Parliament, do no farther oblige in Conſcience, than as they are agreeable to the Doctrine of the Holy Scriptures; ſure their Determinations without any ſuch Authority, can only be look'd upon as the Opinions of ſo many particular private Men. And tho' I have a very great Reverence for the Judgments of ſo many Learned Men; yet granting thoſe Doctrines you mention to be contained in this Book, I think notwithſtanding, that we may juſtly examine them according to the Rules of Reaſon, and expreſs Teſtimonies of Scripture, by either of which, when I ſee you can convince me of the falſhood of my Tenets, I

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shall count myself happy to be better informed. But as for those Treatises of Bishop *Usher*, and Bishop *Sanderson*, which you now mention'd, I must needs confess they are learnedly and elaborately written: And tho' I am against Rebellion as much as any Man, and do believe that Subjects may too often be guilty of it; yet am I not therefore convinced, *That it is absolutely unlawful in all cases whatsoever, even in the most Absolute and Arbitrary sort of Civil Government, for the People, when violently and intolerably oppress, to take up Arms and resist such unjust violence, or to join with any Foreign Prince, who will be so generous as to take upon him their Deliverance.* So that though I freely acknowledge that those good Bishops you mention were very Pious and Learned Men, and that I bear great Reverence to their Memories; yet doth it not therefore follow, that I must own them to be infallible, or as great Politicians as they were Learned Divines; or that they understood the Laws of *England*, as well as they did the Fathers. And perhaps there may be a great deal more said on their Behalfs than can be for divers others, who have since written and preach'd so much upon those Subjects; for if you please to consider the Times of their writing those Treatises, you will find them written about the beginning or middle of the late Civil Wars, which they suppos'd to be begun and carried on contrary to all Law and Justice, under the pretended Authority of the two Houses of Parliament against King *Charles* the First; and therefore it is no wonder if they thought themselves obliged to write very high for the Perogatives and Rights of Princes, and the absolute Obedience of Subjects, when they saw even the King's just and lawful Perogatives in danger to be taken from him by force. And altho' they may perhaps stretch several of these Points too far, yet this may be very excusable; since it is a hard matter to write so exactly against any Error as not to fall in to the contrary extream, which nevertheless may sometimes prove useful enough: As those who would set a stick streight, must bend it to the other side: And so these Doctrines which might then be seasonable, whilst the People carried on their Animosities against the King, farther than in Justice they ought, have not now the same reason and cogency, when this King hath so manifestly endeavoured to pull up the very Foundations both of our Religion and Government. So that I am persuaded, could those good Bishops have lived by the course of Nature to our Times, and have seen the ill and fatal use hath been made of those Doctrines by those in Power, they would either absolutely have renounced them, or at least have been very cautious how they publish'd such doubtful Opinions to the World.

M. I must beg your pardon, Sir, if I am not of your Opinion; for I look upon the absolute subjection of the Subjects to the higher or supreme Powers, to be a thing of such constant and eternal Obligation, that no change of Times or Circumstances can ever dispense with us in, or discharge us from it; and I am so far from believing that those good Bishops would ever have recanted their Opinions in this particular, that had they lived until this time, I think they could not (without the Imputation of Time-servers) have forborn publickly to declare and maintain them: For sure we must not deny or lay aside true Principles, because of some inconveniencies or hardships that may thereby happen to our Religion, Persons, or Civil Liberties, since that were the ready way to give a Licence to the rankest Rebellion, and the highest disobedience to the Supreme Powers; for so the Primitive Christians might have claimed a right to rebel against the Heathen Emperors, pretending they were not bound to submit themselves unto them, because they persecuted God's Church, and put the Christians to death for no other reason than that they were such. Whereas we may plainly see St. *Peter* and St. *Paul* teach us another Lesson, and command *absolute subjection without reserve* to the higher Powers, which were then the tyrannical persecuting Emperors; and that the Primitive Christians who immediately followed the Apostles, understood them in this sense; and altho' they had sufficient strength, yet thought it unlawful to resist those Heathen Emperors under which they lived. I refer you to that vast treasure of Quotations out of the Fathers and Ancient Church Historians, collected with such Learning and Industry by the Lord Primate *Usher* in the second Treatise.

F. It is not my intention, Sir, at present, to fall into a severe examination of so many Texts of Scripture, and Quotations of Fathers, and other Authors, as are made use of by those Learned Men you lately mentioned, which require more consideration than our short time will now afford; therefore the best Method I

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can propose to you, for the true stating and understanding this noble Controversy, were *first* to look into the Natural state of Mankind after the fall of *Adam*; and enquire, *First*, If God has appointed any kind of Government by *Divine Institution* before another. *Secondly*, If he has not; how far Civil Power may be look'd upon as from God, and in what sense as derived from the People. *Thirdly*, Whether Resistance by the Subjects in some Cases be incompatible and absolutely destructive to all Civil Government whatsoever. *Fourthly*, Whether such Resistance be absolutely contrary to the Doctrine of Christ contain'd in the Scriptures, and that of the Primitive Church pursuant thereunto. *Fifthly*, Whether such Resistance be contrary to the Constitution of this Government, and the express Laws of the Land. *Sixthly*, Whether what has been done by the Prince of *Orange*, and those of the Nobility, Gentry, *&c.* in pursuance of these Principles, has been done according to the Law of Nature, the Scriptures, and Ancient Constitutions of this Kingdom; which material Points if we can once settle, and discover where the Truth lies, it will prove the clearest Comment and best Interpretation of all those places of Scripture, and Quotations of Fathers, and other Authors which are cited by Divines or other Writers, for the Doctrines of the *Divine Institution* of *Monarchy*, and the absolute Subjection of Subjects without any Resistance. For when we have once discover'd what the Law of Nature or right Reason dictates; I think we may rest satisfy'd that that is the true Sense of the Scripture: God not having given us any Precept or Command, in Moral, or Practical things, that can be contrary to the Law of Nature or Reason; or incompatible with the happiness and welfare of Mankind in this Life; as the reveal'd Will of God does chiefly regard that which is to come.

M. I do very well approve of your Proposal; and therefore pray give me first your Opinion on those Heads, that I may see how far I may agree with you, and wherein I must differ from you; for I do assure you my Intention is not to argue with you meerly for disputes sake, but that we may correct the Errors of each others Understanding, and discover, if it be possible, where the Truth lies: Therefore pray, Sir, begin *first* with the Natural state of Mankind; but remember to do it like a Christian, and one that believes that we are all deriv'd from one *first Parent*, and that we did not at first spring up out of the Earth like Mushrooms, or as the Men whom *Ovid* feigns to have been produc'd of the Dragons Teeth *Cadmus* is feign'd to have sown, who, as soon as they sprung out of the Earth, immediately fell a fighting and killing each other.

F. I thank you, Sir, for your honest and kind Advice; and shall therefore in the *first place* suppose, that the Necessity as well as Being of all Civil Government proceeded from the Fall of *Adam*; since if that had not been, we had still liv'd, as the Poets fancy Men did under the Golden Age, without any need of Kings or Commonwealths to make Laws against Oppression, Theft, Adultery, Murder, and those other Injuries which Men are now too apt in this lapsed corrupt State to commit against each other; much less would there have been any need of Judges or Executioners, either to sentence or punish Offenders; for if Man had continued as free from Sin as he was in Paradise, there could have been no need of a Supreme Coercive Power, since every Man would have perform'd his Duty towards God and his Neighbour without any punishment or constraint. So that all the Authority that can be suppos'd could have been then necessary for the good and happiness of Mankind, would have been no more than Directive, as that of the Husband over his Wife; or Imperative, as that of Parents over their Children; the former of which would not have been an Absolute Coercive Power neither, but rather such a Power as his Understanding then had over the inferiour Faculties of his Soul, join'd with a *voluntary Submission of her Will to his*; the Coercive Power of the Husband, and his more extensive Rule over her, being conferr'd by God on *Adam*, and in him on all his Posterity after the Fall, for the regulating and restraining the unreasonable Desires and Passions of the Woman, which then began to exert and shew themselves in her. And as for paternal Authority, that would have been so far from being Coercive, that Children having no Inclination to disorder, either in their Wills, Appetites or Passions, there would have been so little need of Punishments, that they would not have required so much as Reproof or Correction; God having first planted the Laws of Nature or Reason in every Man's Breast free from rebellious Motions against it; so that Children then could have had no more to do, than to pay their Parents all that Gratitude, Duty and

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Obedience which was due to them as the ſubordinate Cauſes of their Being, which could only conſiſt in performing thoſe indifferent things, which they then would have had occaſion to command them; ſince Mankind being immortal, and the Earth bringing forth of it ſelf all Neceſſaries for Human Life, there could have been no occaſion of attending and relieving their Parents, when ſick, old, or decrepid, and unable to keep themſelves; and ſo likewiſe upon the ſame grounds all other Men would have been equal by Nature, in reſpect of any Civil Difference; for when there was no neceſſity of Men's Service, there would have been no Diſtinction between Maſter and Servant.

But after the Fall the State of Mankind was altered, and Self-love, and the Deſire of Self-preſervation, grew ſo ſtrong and exorbitant above all natural Equity, that the inordinate Paſſions of Men blinding their Reaſons, they began to think they had a Right not only to the Neceſſaries of Life, but to whatever their unruly Appetites deſired, or that they thought they could make themſelves Maſters of. To remedy which Inconveniencies, I ſuppoſe, the Fathers and Maſters of Families, and other Freemen (in whom alone then reſided that little Government that then was in the World) were forced, after ſome time, to agree upon one or more Men, into whoſe hands they might reſign all their particular Powers, and to make Laws for the due governing and reſtraining thoſe diſorderly Appetites and Paſſions, and alſo endowing them with a ſufficient Authority to put them in execution. But which of the Governments now extant, or that have been formerly, were prior in Nature, I think cannot well be known; whether it was a Monarchy, or an Ariſtocracy, conſiſting of all the Heads or Fathers of Families, or Freemen, is not material, ſince the *S.S.* are ſilent in it: But it being ſufficient to ſuppoſe, that it was at firſt begun by the Perſuaſion or Mediation of ſome one or more wiſe and virtuous Perſons, and was conſented to by the whole Number, conſiſting of many Families, who were ſenſible of thoſe great Inconveniencies and Miſchiefs they lay under for want of Civil Government. But be it which way it will; 'tis moſt certain that it was *principally intended by God for the Good and Preſervation of the Governed, and not for the Greatneſs or Advantage of the Perſon or Perſons appointed to govern*; ſince God deſigned all Civil Government for the reſtraining of Man's inordinate Paſſions and Luſts after the Fall, and procuring, by ſufficient Rewards and Puniſhments, that Peace and Happineſs, which could now no longer be obtained by Men's natural Inclinations to that which was equitable and honeſt. And beſides, it is abſolutely impoſſible to ſuppoſe, that any great Number of People, not preſſed by the Invaſion of a powerful Enemy from abroad (which could not be ſuppoſed in this early Age of the World) would ever be brought to conſent to put themſelves under the abſolute Power of others, but for their own greater Good and Preſervation, or to part with their natural Liberty, without advantaging themſelves at all by the Change.

M. I will not take upon me to aſſert after what manner Mankind would have been governed, in caſe our firſt Parents had continued in their primitive State of Innocency. But this much I think I may boldly affirm in oppoſition to what you have already ſaid, that Civil Government, after the Fall, was not alike in all the Fathers and Maſters of Families; but that *Adam* alone was by God endued with it, as the great Father and Monarch of Mankind: So that not only Civil Power, *in genere*, but *in ſpecie*, (*viz.*) Monarchical, was immediately after the Creation conferred by God upon him. And *Adam* was Monarch of the whole World, even before he had any Subjects. *R.F. A.MM. p.* 254, 255.

F. Sir, not to interrupt you, it ſeems ſomewhat hard to conceive how *Adam* could be a Father before he had Children, or a Monarch before he had Subjects.

M. If you pleaſe to conſider it, you will find no Abſurdity at all in this Aſſertion. For though I confeſs there could be no actual Government without Subjects, nor Fatherhood without Sons; yet by the Right of Nature it was due to *Adam* to be Governour of the World, when as yet he had neither Sons nor Subjects: So tho' not in Act, yet at leaſt in Habit, or *in Potentia* (as they ſay in the Schools) *Adam* was a King, and a Father, from his Creation, and even in the State of Innocency, he had been Governour over his Wife and Children. For the Integrity or Excellency of the Subject doth not take away the Order or Eminency of the Governour: For *Eve* was ſubject to *Adam* before he ſinned; and the Angels, who are of a moſt pure Nature, and cannot ſin, are yet Subjects to God, and perform all his Commands. Which will ſerve to confute what you ſay in dero- Ibid.

gation of Civil Government, or Power, that it was introduc'd by Sin, or the Fall of Man. Government, I grant, as to coactive Power, was not till after Sin, becauſe Coaction ſuppoſeth ſome Diſorder, which was not in the State of Innocency; but as for directive Government, the State of Humane Nature requires it; ſince Civil Society cannot be imagined without a Power of Government. For altho' as long as Men continued in the State of Innocency, they might not need the Direction of *Adam* in thoſe things that were neceſſarily and morally to be done; yet things indifferent, that depended meerly on their Free-will, might well be directed by *Adam*'s ſole Command.

F. Pray, Sir, give me leave to ſettle this Point between us, before you proceed farther; and I doubt not, when you better conſider what I ſay, you will not think we have any juſt Occaſion to differ. So far then you and I are agreed, that even before the Fall *Adam* was ſuperior over his Wife and Children, and that they owed him not only Gratitude and Reſpect as a Parent, but alſo Obedience in all indifferent things: Yet I deny that this Power or Superiority of *Adam* over his Wife and Children was at all a Deſpotical or Civil Power, but meerly Oeconomical, for the Good and Convenience of *Adam*, and the well ordering and Preſervation of his Family; which you will eaſily grant, if you pleaſe to conſider what are the eſſential Differences of Civil Government from Oeconomical. Now the eſſential Properties of Civil Government conſiſt in preſerving and defending the Subjects, both in War and Peace, from foreign Enemies, and inteſtine Injuries, and Invaſions of Men's Perſons or Properties, and in revenging and puniſhing all ſuch Tranſgreſſions by Death, or other Puniſhments, and conſequently in making Laws concerning Property, and for reſtraining all Robberies, Murders, and the like. Now, in the State of Innocency, there could be no need of any of theſe eſſential Functions of Civil Power: for your ſelf muſt grant, that Man was then not apt to ſin, and alſo immortal; ſo that all Laws about Peace or War, Puniſhments of Offences, publick Judgments concerning *Meum* and *Tuum*, and all Injuries, were abſolutely needleſs, and had never been in Nature, if *Adam* had not ſinned; and then how you can call this Authority, or Superiority (which I grant *Adam* had over his Wife and Children) Civil Power, I can by no means underſtand.

But I do utterly deny, that even after the Fall *Adam* was a Monarch, or *Sole* and *Abſolute Lord* over the whole Earth, and all Creatures therein contained; and deſire you to give me ſuch plain Proofs of it, either from Reaſon or Scripture, that I need no more doubt of it, than your ſelf.

M. I ſhall, firſt of all, give you an Argument drawn from the Reaſon of the thing; and in the next place, the Authority of Scripture, for my Opinion: And firſt, I think it is evident, that every Man that is born is ſo far from being free, that by his very Birth he becomes a Subject of him that begets him; and even *Grotius* himſelf acknowledges, that *Generatione Jus acquiritur in Liberos.* And indeed the Act of Begetting being that which makes a Man a Father, his Right of a Father over his Children can naturally ariſe from nothing elſe. And the ſame Author in another place hath theſe Words upon the Fourth Commandment: *Parentum nomine, qui naturales ſunt Magiſtratus, etiam alios Rectores par eſt intelligi, quorum authoritas Societatem humanam continet:* And if Parents be natural Magiſtrates, Children muſt needs be born natural Subjects. So that not only *Adam*, but the ſucceeding Patriarchs had, by Right of Fatherhood, Regal Authority over their Children, as may appear by divers Teſtimonies out of Scripture; and therefore it is very reaſonable, that all Fathers ſhould have a Power over the Lives of their Children, ſince it is to them that they owe their Life, Being and Education: And I think that even the Power, which God himſelf exerciſeth over Mankind, is by Right of Fatherhood.

F. Before you come to Scripture, give me leave, in the firſt place, to examine your firſt Argument, which you deduced from the Law of Nature, or Reaſon: For I doubt, if you pleaſe better to conſider of it, you will find, that ſo light and tranſitory an Action, as that of Generation, cannot give any Man an abſolute Property and Dominion over the Perſon and Life of thoſe whom he begets; *ſince few Men do principally intend the giving of a Being to another, ſo much as they do their own Pleaſure, in that Action.* Nor do we owe our Lives, properly ſpeaking, to our Parents, but to God, who is the true and original Cauſe of our Being; tho' it is true he makes uſe of our Parents as phyſical, tho' not as moral Means or Inſtruments

ments for that end; since it doth not lie in their power to hinder the generating of Children, if they perform the Acts necessary thereunto. So that both the Antecedent and the Consequent are altogether false, *viz.* That Parents give their Children Life and Being, and that therefore they have an absolute Power over their Lives and Persons: Which, if it were true, would give the Mother an equal Title to the Lives of the Children, as the Father; seeing they owe their Lives as much to the one as the other: Which Power in the Mother I am sure you will not admit of. But as for what you say concerning the Power of Fathers, arising from Education; tho', I confess, that is a much better Title than the other; yet doth it not follow, that, because by reason of my Parents Care of me, before I was able to help my self, I owe my Preservation and Well-being to them, that therefore they are to be perpetual and absolute Lords over my Person and Life; since, by thus breeding me up, they only performed that Duty and Trust, which God had laid upon them, for the Good and Preservation of Mankind, and which they could not, without committing a Sin, either refuse or decline; and therefore their Authority or Power over my Person, being only for my Well-being, can extend no farther than whilst I am not of Years of Discretion to understand the true Means of my own Good and Preservation: And tho' I grant, that I am bound in Gratitude to return this Care and Kindness by all Acts of Duty and Piety towards them, as long as I live; yet doth it not therefore follow, that they are Masters of my Life, and of all that I have; since this were to take away more than they themselves ever gave. And tho' I should grant you, that even the Power, which God himself exerciseth over Mankind, is by Right of Fatherhood or Creation; yet this Fatherhood is such, as utterly excludes all Pretence of Title in earthly Parents: For he is our King, because he is indeed the Maker of us all, which no natural Parents can pretend to be of their Children. But if you please more closely to consider your own Argument, you will find that it will quite destroy your Hypothesis. For if all Fathers have an absolute Power over their Children by Generation, then *Adam* could only have Power over his own Children which he begat, and none at all over his Grand-children; since their Fathers, by this Argument of Generation, ought to have had the same Power over their Children, which *Adam* had over them, for the same Reason. So that this Monarchical Power of *Adam*, as a Father, could extend no farther than one Generation at the most. *T. T. G.* c. 5. p. 69.

M. I shall not further urge this Argument of Generation, since I see you are not satisfied with it; but this much I think I can clearly prove from Scripture, that *Adam* was Lord over the Persons and Lives of his Wife and Children, by virtue of that Command which God gave *Eve*, Gen 3. 16. *Unto the Woman he said, I will greatly multiply thy Sorrow and thy Conception: In sorrow thou shalt bring forth Children, and thy Desire shall be to thy Husband, and he shall rule over thee.* From which Words it appears, that *Adam* had not only an absolute Power granted him by God over his Wife, but all the Posterity that should be born of her. For, in the first place, it here seems that *Eve* was to yield an absolute Subjection to her Husband, who was to rule over her as her Lord, from these Words, *and thy Desire shall be* [subject] *to thy Husband*, (as it is better express'd in the Margin) *and he shall rule over thee.* And if his Wife was thus to be subject to him, then likewise by a Parity of Reason all her Children were to be so too; it being a Maxim in the Law of Nature, as well as in the Civil Law, that *Partus sequitur ventrem:* So that if *Eve* was to be absolutely subject to *Adam*, the Issue by her must be so too; as in the case of a *Master of a She-slave*, not only the Person of the Woman, but all that are begotten of her, either by her Master or any other Man, are likewise his Servants; otherwise the Children would be in a better condition than their Mother; for *Adam* having no Superior but God, both his Wife and Children must have been alike subject to him. There is likewise another Rule in the Civil Law, which is a Voice of Nature too, *Quicquid ex me & uxore mea nascitur, in potestate mea est*: And tho' this is true in some sense in all Fathers whatsoever; yet it was so in a more superlative degree, where the Father had no Superior over him but God, as *Adam* had not. And farther, it seems apparent to me, from the very Method that God us'd in creating Mankind, that *Adam*'s Wife and Children should be subject to him: For if *Adam* and *Eve* had been created at once, it could not have been known which of these two had the best Right to command, and which was to obey. For *Adam*'s Strength, or Wit alone, would not have *B.P.P.* §. 31. *Ib.* §. 32. *Ib.* §. 20, 21.

given him any Authority over her; and it might be that *Eve* was as ſtrong and as wiſe as he, or at leaſt ſhe might have thought her ſelf ſo; and if theſe two had differ'd and fought, nought but the Event could have declared which of them ſhould have been Maſter.

So when they had Children born between them, the Children could have told as little which of the Parents they ſhould have obey'd, in caſe they had differ'd in their Commands: So that it had been impoſſible this way that any Government could have been in the World. But when God created only one Man, and out of him one Woman was made, ſure he had ſome great Deſign in this; for no other Creature was thus made at twice, but Man. Now St. *Paul* ſhews a Reaſon for God's acting thus, when he ſays, the Woman ſhould not teach, nor uſurp Authority over the Man, *&c.* And mark the Reaſon: *For* Adam *was created, and then* Eve. So that, in the Apoſtle's Judgment, this was one main Cauſe why *Adam* ſhould be ſuperior to his Wife, and all other Husbands to their Wives. And in the *Corinthians*, from the Hiſtory of the Creation, the ſame Apoſtle deduces two other Reaſons for the Superiority of the Man over the Woman: *For* (ſays he) *the Man is not of the Woman, but the Woman of the Man*; (that is, *Eve* was formed out of *Adam*) *neither was the Man created for the Woman, but the Woman for the Man.* So that you ſee here is *Adam* ſtated in a degree of Superiority over his Wife before the Fall; and immediately after it, God again renew'd *Adam*'s Title, when he told *Eve* (as I have but now mention'd) *thy Deſire ſhall be ſubject to thy Husband, and he ſhall rule over thee.* Now I ſo far agree with what you at firſt laid down, that if the Fall had not diſorder'd her Faculties, and render'd her apt and prone to diſobey her Husband, this Command need not have been given her; but ſhe would have known her Duty from the Order and End of the Creation, without this explicite poſitive Command.

Ib. §. 22.
§. 24.
1 *Tim.* 2. 12, 13.
§. 25.
1 *Cor.* 11. 8, 9.
§. 26.

F. You have, Sir, taken a great deal of pains to prove that which I do not at all deny, that as well before as after the Fall, *Adam*, (and conſequently all other Husbands and Fathers) ought to be ſuperior to their Wives and Children, and likewiſe govern and command them in all things relating to their own Good, and that of the Family, as long as they continue Members of it; nay, that Children, after they are ſeparated from their Father's Family, ſtill owe their Parents all the Gratitude, Duty, and Reſpect imaginable: But yet I deny that this Power, which *Adam* had over *Eve*, and his Iſſue by her, and all other Husbands have over their Wives and Children, is a regal deſpotical Power, or any more than conjugal in reſpect of his Wife, and paternal in reſpect of the Children; nor is that filial Reverence and Obedience, which Children yield their Fathers, the ſame with that Reſpect and Duty, which a Wife owes her Husband, or the ſame with that ſervile Subjection, which Slaves owe their Lord and Maſter; neither is the Duty of a Wife of the ſame kind with that which Sons pay their Fathers, or Slaves their Lords; nor did *Sarah*, when ſhe called *Abraham* Lord (who was then Maſter of a ſeparate Family, and ſo ſubject to none) ever ſuppoſe that her Husband had the ſame Authority over her, as he had over *Hagar* her Bondwoman, to ſell her, or turn her out of doors at his pleaſure. But to make it more apparent to you, that this Power granted to *Adam* over *Eve*, was not regal nor deſpotical, but only conjugal, and for the well ordering of the Family, where ſome one muſt command in chief, and the reſt obey, to avoid Confuſion, will appear, firſt, if you conſider that this Subjection of *Eve* to *Adam* was not enjoin'd till after the Fall, and is part of God's Judgments denounc'd againſt her, for tempting her Husband to eat the forbidden Fruit, and certainly included ſomewhat more than that Superiority which he had over her by his Creation, or elſe God ſhould not have made it any part of the Judgment denounc'd upon her. If this Submiſſion ſhe ow'd to her Husband before the Fall, had been of the ſame nature with that Subjection ſhe was to be under after it; which yet I take to be neither ſervile nor abſolute, but only a conjugal Obedience or Submiſſion of her Will to his, in all things relating to the Government of the Family, and the Carriage of her ſelf; tho' I do not deny but the Husband may ſometimes reſtrain her by force, in caſe ſhe carries her ſelf unchaſtly, or indiſcreetly, to the loſs of her Reputation, and Prejudice of his Intereſt, when ſhe will not be directed, or adviſ'd by his Perſuaſion, or Commands, which before the Fall, when ſhe was in a State of Innocency, there was no need of; ſince (as your ſelf grant) before the Fall ſhe knew what was her Duty, and performed it without any force or conſtraint, *&c.* And therefore that

Text,

Text, which you have now quoted out of *Geneſis*, *Thy Deſire ſhall be* [ſubject] *to thy Husband, and he ſhall rule over thee*, is not fairly cited: For, as for the marginal Addition, *viz.* [*ſubject*] to thy Husband, it is not warranted from the *Hebrew* Original, or Verſion of the LXX; the *Hebrew* having no more than (*thy Deſire ſhall be to thy Husband*) which the LXX renders ἀποστροφὴ, *i. e.* the Converſion or Inclination of the Deſire, by which ſome Interpreters underſtand no more than the carnal Appetite. So likewiſe from the Words [*rule over thee*] they likewiſe obſerve, that *Moſes* makes uſe of the ſame *Hebrew* Word, when he makes mention of the Sun and Moon ruling the Day and Night, tho' they do not do it by any Violence, or corporeal Force: So likewiſe, by this ruling of the Husband, is not to be underſtood any abſolute, deſpotick Power, whereby he hath a Right to diſpoſe of the Perſon and Actions of his Wife in all things at his pleaſure; but that ſhe may in many caſes refuſe, nay controul his Commands, and reſiſt his Actions, in caſe they prove unlawful, or deſtructive to her ſelf and Children.

But that this Argument of St. *Paul*, of the Husband's Superiority over his Wife, was not granted to *Adam* alone, but equally extends to all Husbands whatſoever, appears from the very Text it ſelf; or otherwiſe St. *Paul* had argu'd very impertinently of the Duty of all Wives: And if ſo, it will follow that every one of *Adam*'s Sons, as ſoon as he took a Wife, had the like Authority over her, as *Adam* had over their Mother: And if over their Wives, then, by your Maxims (of *Partus ſequitur ventrem, & quicquid ex me & uxore mea naſcitur, in poteſtate mea eſſe*) all the Sons of *Adam* muſt have had the ſame Power over their Children, as their Father had over them. So that the ſame Conſequence will ſtill follow from theſe Places of Scripture, and alſo from your Civil Law Maxims, that either *Adam* had no Civil or Deſpotick Power over his Wife and Children; or elſe, if he had, that every one of his Sons, when married and ſeparated from his Father's Family, had the ſame, and conſequently there were as many Princes as diſtinct Maſters of Families; and then what would become of *Adam*'s Monarchy, I give you leave to judge.

M. I muſt beg your Pardon, if I am not ſatisfied with your Anſwer to my laſt Argument: For I am ſtill of opinion, notwithſtanding what you have ſaid, that *Eve* was to yield an abſolute Subjection to her Husband, from that Place already cited, *That her* (*viz.* Eve's) *Deſire* (*i. e.* Will) *ſhould be ſubject to her Huſband*, &c. To which you anſwer, that this Subjection of *Eve* to *Adam* was not the ſame which Sons owe their Fathers, or Slaves to their Lords; and that *Eve* owed *Adam* not a filial, or ſervile, but a conjugal Subjection. For I would fain know the difference, in the State of Nature, between one and the other: For if you pleaſe to compare that Place of *Geneſis*, I but now quoted, with that other where God gives *Cain* Power over *Abel*, his younger Brother; you will find them the ſame in Words, as alſo in Senſe. For in this God likewiſe tells *Cain*, *That unto thee ſhall his Deſire be ſubject, and thou ſhalt rule over him.* And ſure God could not intend by theſe Words, that *Abel* ſhould yield a conjugal, but a filial Subjection to his elder Brother; and theſe Words are not capable of two Senſes, but muſt be underſtood alike in both Places (*i. e.*) That the Deſire (which is a Faculty of the Soul, and that the moſt active too) was to be ſubject, and the Body, and all the Powers of it, were to be over-ruled by him; which is as full and abſolute a Subjection as can be expreſs'd in Words. And whereas you ſay, that theſe Words were not ſpoken till after the Fall, and thence ſeem to infer, that *Eve* did not owe *Adam* ſo much as a conjugal Subjection before that; St. *Paul* hath given you an Anſwer to that already, which it is needleſs to repeat; and therefore, upon the whole matter, I think your Diſtinction of a conjugal Subjection different from a filial or ſervile one, will ſignify nothing.

B.P.P. §. 27, 28.

Gen. 4. 7.

F. I doubt not, Sir, but I ſhall be able to make good this Diſtinction of a ſervile and a filial Obedience; and in order to it, ſhall reply to the Conſequence you have made, for *Eve*'s abſolute Subjection to *Adam*, from the like Expreſſion uſed by God to *Cain* concerning his ruling over his Brother *Abel*, as is us'd here to *Eve* concerning her Subjection to her Husband; and that becauſe the Subjection of *Abel* was abſolute, that therefore her Subjection muſt be ſo too. I muſt crave your Pardon if I deny you Aſſumption; for I think I am able to prove, that neither *Abel*, nor any other younger Brother, was, or is obliged, by virtue of this Text, to yield an abſolute Obedience to his elder Brother, in the State of Nature, or that he is therefore his Lord and Maſter. Nor can I ſee any Abſurdity, but that the ſame Words might be ſpoken to ſeveral Perſons, yet in different

Senſes,

Senſes, which, according to the Nature of the Perſons to whom they were ſpoken, might have different Effects. As here theſe Words, when ſpoken to *Eve*, enjoin a conjugal Submiſſion of *Eve*'s Will to *Adam* as her Husband; but when ſpoken to *Abel*, they may ſignifie a fraternal Submiſſion of *Abel*'s Will to *Cain*'s, as the elder, and perhaps the wiſer of the two, but without giving any abſolute or deſpotick Power over either.

M. I cannot be yet ſatisfied with your Reply; for methinks this is but to triſle with God's Word, when he told *Cain*, thy Brother's deſire ſhall be ſubject to thee, that is, (*ſay you*) *Thou ſhalt rule over him only as far as he thinks fit*; or if thou haſt the knack to wheedle or perſuade him. Was not this a mighty Matter for God Almighty to appear to *Cain* about? An excellent and rational way to appeaſe his Wrath towards his Brother? Whereas God here plainly enjoineth a Subjection from *Abel* to his elder Brother; and if ſo, by vertue of the ſame Words, a like Subjection of *Eve* to *Adam*; and then it will likewiſe follow, that as the Streams are of the ſame Nature with the Fountain, the Subjection of all her Poſterity will likewiſe be included in hers, which I have ſufficiently proved already, had you not miſtaken the true Senſe of thoſe two Maxims I laid down. For firſt, if *Partus ſequitur ventrem*, and the Mother be a Subject, as *Eve* was, all her Poſterity muſt be ſo to all Generations. And if *Quicquid ex me & uxore mea naſcitur, in poteſtate mea eſt*, be true, then *Adam*'s Grand-children, and great Grand-children, deriving themſelves from him and *Eve*, muſt be likewiſe under *Adam*'s Power. Nor can I ſee how his Sons, or Grand-children, by ſetting up ſeparate Families, could ever diſcharge themſelves from this abſolute Subjection to *Adam*, ſince they could never have quitted his Family without his Conſent; and when they did quit it, unleſs he pleaſed to manumit them, they, their Wives and Children were ſtill as much ſubject as they were before. Since I do not ſee, if they were once Subjects to him, how any thing but his expreſs Will and Conſent could ever diſcharge them from it. Nor was that Authority (which every one of theſe Sons of *Adam* might exerciſe over their Wives and Children, though they were not freed from the Power of their Father) any more inconſiſtent with that Subjection and Obedience they owed him, as their Prince, than in an abſolute Monarchy, the Power of Fathers and Husbands over their Wives and Children, as to the things relating to the well-ordering and governing their Families, is inconſiſtent with that ſupreme predominant Power which the Monarch hath over the Father himſelf, and all his Family; or than the Power of a Maſter of a Family, in the Iſle of *Barbadoes*, over his Slaves that are married, and have Children, is inconſiſtent with that Marital and Paternal Power which ſuch a Slave may exerciſe over his Wife and Children within his own Family, tho' ſtill ſubordinate to the Will of the Maſter, who may forbid any ſuch Slaves, or their Children to marry, but where he hath a mind they ſhould; and may likewiſe hinder them from correcting or putting to Death their Wives and Children without his Conſent. Though ſuch Subjects in an abſolute Monarchy, or Slaves in a Plantation, cannot have, or enjoy any Property in Lands or Goods but at the Monarch's, or Maſter's Will. And ſo likewiſe at firſt none of theſe Sons of *Adam*, though they ſet up diſtinct Families from their Fathers, could enjoy, or encloſe any part of the Earth without his Grant or Aſſignment, to whom the whole was given by God before.

It ſeems likewiſe to be a great Miſtake, when you at firſt affirmed, that all Civil Government was ordained by God, *for the Benefit and Advantage of the Subjects, rather than the Governours.* Whereas from the firſt and moſt Natural Government it appears, that Children, who were the Subjects, were ordained as much for the benefit and help of their Parents, who were the firſt Monarchs, as their Parents for them. From all which we may draw theſe Concluſions: *F. A. M M. p.* 244. Firſt, That from *Gen.* 3. *v.* 6. already cited, we have the Original Charter of Government, and the Fountain of all Civil Power derived from *Adam* as the Father of all Mankind. So that not only the Conſtitution of Power in general, but the ſpecial Limitation of it to one kind, (*viz.*) Monarchy, and the Determination of it to the individual Perſon of *Adam*, are all Ordinances of God. Neither had *Eve*, or her Children, any Right to limit *Adam*'s Power, or join themſelves with him in the Government. Now if this Supreme Power was ſettled, and founded by God himſelf in Fatherhood, how is it poſſible for the People to have any Right to alter, or diſpoſe of it otherwiſe? it being God's Ordinance that this Supremacy ſhould be unlimited in *Adam*, and as large as any Acts of

his

his Will. So that he was not only a Father, but a King, and abſolute Lord over his Family; a Son, a Subject, and a Servant, or Slave, beingone and the ſame thing at firſt; the Father having Power to diſpoſe of or ſell his Children or Servants at his pleaſure: And tho' perhaps he might deal too ſeverely or cruelly in ſo doing, yet there was none above him, except God, in the State of Nature, who could call him to an account, much leſs reſiſt or puniſh him for ſo doing. *F. P. O. A.*

F. You have, Sir, made a very long Speech upon the Monarchical Power of *Adam*, which you have made of ſo large an extent, that this imaginary Kingſhip muſt ſwallow up all the other more dear and tender Relations both of a Husband, and of a Father. So that were I not ſatisfied you were a very good natured Man, and ſpoke more the Senſe of others than from your own natural Inclinations, I ſhould be apt to believe, that if you had ſufficient Power, you would prove as great a Tyrant over your Wife, Children, and all that ſhould be under your Command, as ſuch Arbitrary Tenets would give you leave: But ſince, I hope, your Error lies rather in your Underſtanding, than in your Nature; I ſhall make bold to ſhew you the Miſtakes you have committed in thoſe Principles you here lay down. I might firſt begin with the Place of Scripture you farther inſiſt upon, for *Eve*'s abſolute Subjection to *Adam* from the like Expreſſion uſed by God to *Cain* concerning his ruling over his Brother *Abel*, as is us'd here to *Eve*: And though you are pleaſed to think my Expoſition of this Place ſo ridiculous, yet I doubt not but to be able to prove, when I come to ſpeak of this pretended Divine Authority of elder Brothers over the younger, that this Place cannot be underſtood in any ſuch Senſe, according to the beſt Interpretation that both the Reaſon of the Subject, and the Senſe the beſt Commentators put upon it can allow: But I ſhall defer this 'till we come to diſcourſe concerning the Succeſſors of *Adam* in this Monarchical Power you ſuppoſe. And therefore I ſhall only at preſent purſue that abſolute Power, which you ſuppoſe *Adam* to have had, not only over *Eve*, but all her Deſcendants. For indeed your Argument of *Eve*'s, and conſequently all her Children's abſolute Subjection to *Adam*, depends upon a very falſe Suppoſition. Since if the Subjection of *Eve* to *Adam*, and of all Wives to their Husbands is not ſervile or abſolute, neither can that of the Children be ſo; ſince, according to your own Simile, if the Streams are of the ſame Nature of the Fountain, they can never riſe higher than it: And tho' I grant, *Adam* might in ſome caſes have put his Wife or Children to Death, for any enormous Crime againſt the Law of Nature; yet I allow him that Power, not as a Husband or Father, but only as a Lord or Maſter of a ſeparate Family, who having no Superior in the State of Nature, I grant, is endued by God with this Prerogative, for the Good of his Family, and Preſervation of Mankind, leſt ſuch horrid Crimes, ſo much to its prejudice, ſhould paſs unpuniſh'd. But that the Husband, or Father, doth not act thus in either of theſe two Capacities, I can eaſily prove.

Firſt, Becauſe the Scripture tells us the Husband and Wife are one Fleſh, and that no Man ever yet hated his own Fleſh; ſo that it is impoſſible for a Husband to put his Wife to Death, 'till by the Greatneſs of her Crimes ſhe becomes no longer worthy of that tender Affection he ought to bear her. Then as to the Father, he, as a Father, ought not to deſire to put his Son to Death, whoſe Being he hath been the cauſe of, and who is principally made out of his own Subſtance, and on whom he hath beſtowed Nouriſhment and Education for ſo many Years, until he finds that inſtead of a Son he proves an Enemy to his Family; or hath ſo laid wait againſt his Life, that as long as he lives he cannot be ſafe; or elſe commits ſome of thoſe heinous Crimes, which, by the Laws of God and Nature, do juſtly deſerve no leſs Puniſhment than Death; in ſhort, when he ceaſes any longer to deſerve the Name of a Son. *Gen.* 2. 24. *Epheſ.* 5, 29. 30.

Yet this Authority holds no longer than whilſt the Son remains part of his Father's Family, and ſo ſubject to his Power: And this I take to be the reaſon why we do not read, that *Adam* took any notice of *Cain*'s murdering his Brother, becauſe he was before freed from his Power, by ſetting up another Family, which certainly had been *Adam*'s Duty to have done, had he been then under his Juriſdiction; Murder being as great a Crime before the Flood as after, though the Puniſhment of it by Death were not poſitively enjoin'd by God 'till then. But I ſhall prove this point more particularly by and by, as alſo that *Adam*'s Children might enjoy, or encloſe ſome part of the Earth without any Grant or *Gen.* 9. 5.

Aſſent

Assent from *Adam*, to whom you suppose (though without any Proof as yet) that the whole Earth was given by God.

To conclude, I doubt you mistook me when you say, I at first affirmed, that all Civil Government was ordained by God, for the Benefit or Advantage of the Subjects, rather than that of the Governours; and therefore you undertake to shew me, that in the first and most natural Government, *viz.* that of a Family, *Children, who are Subjects in the State of Nature, are ordained as much for the Benefit and Help of their Parents, who are their Princes or Masters, as their Parents for them*; in which Assertion you fall into more than one Mistake; for I do not assert, that in Civil Government the Benefit or Advantage of the Subject is only to be considered: For I shall easily grant, that Princes may very well challenge a very great share in the Honour and other Advantages that may be reap'd by their Government; and yet for all that, when the Happiness and Preservation of the Subjects is incompatible with that of the Prince, the former is to be preferr'd; and Bishop *Sanderson* is of this Opinion, when he tells us in his Lectures * *De Juramento, That the end of Civil Government, and the Obedience that is due to it, is the Safety and Tranquility of Humane Society*; and therefore the end is certainly to be preferred before the means, when they cannot both consist together. But this is no Argument for the preferring the Benefit or Advantages of Parents before that of their Children, since Paternal is not Civil Government: Nor are Fathers absolute Princes or Masters over their Children, as you suppose; and yet I think I may safely affirm, that even in this Paternal Government, though it be granted that Children are ordained for the Benefit, or Help of their Parents; yet when their Happiness and Preservation is inconsistent with that of their Children, it may be a great doubt which is to be preferr'd, since God's chief Intention in Parents was for the Preservation and Propagation of Mankind; and therefore I cannot see how it could ever be any part of the Paternal Power, for a Father to make his Child a Slave, or to sell him to others at his pleasure, as you suppose; this being no part or end of the Design or Duty to a Father.

* *De oblig. conſc. Prælect.* 5. §. 19.

And whereas you lay to my charge my mistaking the true Sense of those Civil Law Maxims you have quoted; I think I can easily prove, that the Mistake lies on your side, and that you have misapplied them, to make them serve your purpose: for as to your first Maxim, *Partus sequitur Ventrem*, from which you infer, that the Child ought to be of the same condition with the Mother, this Rule in your Civil Law relates only to Bastards, and not Legitimate Children, who follow the condition of the Father according to your Digest: *Qui ex uxore mea nascitur, filius mariti est habendus*; so likewise in your *Code*, *Cum legitimæ nuptiæ factæ sunt, patrem liberi sequuntur, vulgo quæsitus matrem sequitur.* Nor is your second Maxim more true; for though I grant, according to your *Roman* Law, the Father might have absolute Power over his Wife and Children; yet I cannot see how this word, *nascitur*, can be extended beyond those that are born of a Man and his Wife, and therefore can never concern Grand-children much less any more remote Descendants; and this very Law, that a Son or Daughter might be killed by a Father, seem'd so cruel and odious, even to the ancient *Romans* themselves, that neither the Law of the twelve Tables, nor the *Julian* Law of Adulteries, which were provided against Fathers, Sons, and Daughters, ever extended it to the Grand-father, Grand-son, or Grand-daughter by Interpretation; or Argument *a casu consimili*. Nor do these Words, *in Potestate mea est*, prove more than that all Children are born under the Power of their Parents, though whether they shall always continue so long as they live, is not to be proved from this Maxim; nor if it were, doth that make it a Law of Nature. For I must needs observe this of divers of you Civilians, that whatever Maxim you find in your Civil Law Books, that will make for your Notions, you presently adopt them for Laws of Nature, without ever enquiring by the strict Rules of Reason, and the Good of Mankind, (by which alone any Law of Nature is to be tried) whether they are so or no.

Dig. 1. *Tit.* 6. *L.* 16.

Cod. Tit. 19. *L.* 14.

Dig. Tit. 5. *L.* 19.

I shall not trouble my self to confute those false Conclusions you have brought from those weak Premisses; for if I have destroyed your Foundation, I think your Superstructure cannot stand; and therefore you must pardon me, if I cannot find this Original Charter of Government, and of all Civil Power, to be derived from *Adam* by any Argument that yet you have brought either from

Scripture,

Scripture, or Reaſon; only give me leave to obſerve thus much upon what you have ſaid, *That if not only the Conſtitution of Civil Power* in general, but the ſpecial Limitation of it to one kind, (*viz.*) Monarchy, be the Ordinance of God, I cannot ſee how any other Government but that can be lawfully ſet up, or obeyed by Men, ſince no Government can challenge this Priviledge againſt Divine Inſtitution.

M. Since this Hypotheſis doth not pleaſe you, I ſhall be glad if you can ſhew me any better Original, either of *Adam*'s Paternal Power, or of Civil Government, than this that God gave *Adam* over *Eve*, who indeed was, as at the firſt Subject, ſo the Repreſentative of all that followed; and it reaches not only to all her Daughters in relation to their Husbands, but to all of them in relation to their Fathers, and to her Sons too, in relation to both their Father, and their eldeſt Brother after his Deceaſe, if no Body ſuperior to both of them, and him interpoſed, and diverted, or rather over-ruled it. *B. P. P.* § 36.

For (1.) If a Priority of Being gave *Adam* a Power over his Wife, it gave him much more ſo over his Children.

(2.) If God's taking *Eve* out of *Adam*, the forming her of one of his Ribs without his Concurrence, did yet make her his Inferior, his Children were much more ſo, which were derived from him, and by his Act.

(3.) If ſhe were formed for him, not he for her; and that was another reaſon; this extended to his Children too, who were begotten for the Comfort and Aſſiſtance of both him and her.

(4.) When God put *Eve* under the Subjection of her Husband after the Fall, her Children muſt needs be ſo too, if they were not excepted, but we read of no Exception.

(5.) Is it not an eternal Law of Nature, that all Children ſhould be ſubject to their Parents? And did not this Law ſpread itſelf over the Face of all the Earth, as Mankind increaſed?

And whereas you would limit this Power of Parents over their Children, both in its Extent and Duration, this is purely owing to the Civil Laws of Nations, and not to the Laws of Nature, and is different in different Places; ſome having reſtrained the Power of Parents more, and ſome leſs. But God gave the Parents a Power of Life and Death over their own Children, amongſt his own People the *Jews*, and that not limited in Duration neither, for the Father's Power over his Son was not determin'd but by his Death, though they could not execute that Power, but in the preſence of a Magiſtrate. And I am alſo ſure that in all the Hiſtories and Relations I have met with, amongſt civiliz'd Nations (where it is not otherwiſe order'd by the Civil Laws of the Country) all Husbands and Fathers have Power of Life and Death over their Wives, and Children; and ſo it is at this Day amongſt many Eaſtern Nations, and was antiently amongſt the *Romans*, *Gauls*, and *Perſians*, &c. Which Power I take not to have been given, or conferred on them, but rather left to them by the Civil Laws of their Country in the ſame State, as it was eſtabliſh'd by the Law of Nature, or rather Nations. Now if ſuch Husbands and Fathers antiently had, and ſtill have a Power of Life and Death in divers Countries over their Wives and Children, I deſire to know what higher Power they could enjoy, ſince he that hath power over a Man's Life, which is of the higheſt concern to him, may certainly command him in all things elſe? *Ibid.*

But as for your laſt Scruple, that you cannot ſee, if Monarchy be of *Divine Inſtitution*, how any Government but that can be lawfully ſet up or obeyed by Men, I think it may be a ſatisfactory Anſwer, if I tell you, that if thoſe who are born under a Monarchy can juſtifie the Form they live under to be God's Ordinance, they are not bound to forbear their own Juſtification, becauſe others cannot do the like for the Forms they live under; let others look to the Defence of their own Government: If it cannot be proved, or ſhewed, that any other Form of Government had ever any lawful beginning, but was brought in, or erected by Rebellion, muſt therefore the lawful and juſt Obedience to Monarchy be denied to be the Ordinance of God? *F. A. MM.* p. 266.

F. I hope, before I have done, to give you a clearer Original from the Law of Nature, as well of Paternal Authority, as Civil Government, without recurring to Divine Revelation, which (as I ſaid before) would oblige none but *Jews*, and Chriſtians, or *Mahometans*, whoſe Law is a Mixture of both the other.

In the mean time give me leave to tell you, that *Eve*'s being the Representative of all Wives, did not put either herself or her Daughters into any absolute Subjection either to *Adam*, or their Husbands; if it did, then could not this Subjection be likewise owing either to *Adam*, as the Patriarch, or Grandfather of the Family, or to his eldest Son after his Decease; since this would make every Wife in the state of Nature, to have had two absolute Lords, her Husband, and her Husband's Father, which is contrary to our Saviour's Rule, that no Man can serve two Masters, that is, in the same kind of Service: And therefore it plainly makes out my distinction, that there is a great deal of difference between a Conjugal Submission of a Wife to her Husband, and a Servile Subjection of a Servant to his Lord, as also of that Obedience or Duty, which a Subject oweth his Sovereign; since by your own Hypothesis it necessarily follows, that either *Cain*'s Wife (for Example) was not to be subject to her Husband, or else must be free from all Subjection to her Father *Adam*: But as for any Submission to *Cain*, as elder Brother after *Adam*'s Decease, I desire to be excused medling with it, till we have dispatch'd the Question in hand.

I come now to those fresh Considerations you bring for this Monarchical Power of *Adam*; for indeed I cannot call them new Arguments, because most of them have been answered already. The first Consideration is from the Priority of the Being, which you suppose gave *Adam* a Power over his Wife, and consequently over his Children; but I think this Priority of Being could give him no such Power at all over her, and consequently not over them; for I desire to know whether if God had been pleas'd to have Created, the same day that *Eve* was made, twenty single Men, and their Wives, that therefore *Adam* must have been, from his being first Created, Monarch over them all, unless God had particularly commanded it?

I grant indeed that from God's Creating *Eve* out of *Adam*, it did render her inferior to him, and also from God's express Command, that she was to be subject to him in all Conjugal Duties; yet did neither of these render either her, or her Children absolute or perpetual Subjects, and Slaves to *Adam*. And that their being deriv'd from him, or by his Act, doth not at all alter the Case, I have already proved.

As for the third, That if she were formed for him, and not he for her, that this must be another reason which must extend to his Children too: Here the Assumption is not only false, but the Consequence too: For she was not only formed for him, but that they might be a mutual help to each other; and therefore the Scripture tells us, *A Man shall leave his Father and his Mother, and shall cleave unto his Wife, and they two shall be one Flesh*; which Words (in my Opinion) are very far from proving any such absolute Subjection; for no Man can ever tyrannize over his own Flesh; and if such an absolute Subjection had been intended from *Eve* to *Adam*, it had been more consonant to Reason, for the Scripture to have enjoin'd her to have left her Father and Mother to cleave to her Husband. Whereas indeed there was no more meant by this Text, than that when a Man marries, he may freely quit his Father's Family, and joining himself to his Wife, may set up another of his own. But as for the Children that were begotten between them, tho' I grant they might be intended both for the Comfort and Assistance of him, and her; yet I have already proved that the Parents are more chiefly intended for their Children's Propagation, and Preservation, than the Children are for their Interest and Happiness.

Gen. 2. 24.

Your fourth Consideration is only a supposition of the Question which is yet to be proved; that *Eve* was under an absolute Subjection to *Adam* after the Fall. I have already proved this supposition not to be true; and therefore the consequence, as to the Children, is false likewise.

Your fifth is rather an Interrogation than an Argument, whether Children ought not to be, and have not always been subject to their Parents all over the World? In answer to which, I grant that it is true, that they have ever been so, tho' not in your Sense. For I hold this Subjection neither to be servile, or absolute, not yet perpetual, as long as they live: But in reply to this limitation of the Power of Parents over their Children both in its extent and duration, you tell me, *this is purely owing to the Civil Laws of Nations, and not to the Laws of Nature*; and for a Proof of this, you produce God's own People the *Jews* for an Example, that the Power of the Father over his Son was not determined but

by

by his Death. But yourself confessed, *that he could not exercise this Power of Life and Death, but in the presence of the Magistrate*; the Circumstances of which, if they be consider'd, will rather make against you; for, first, the Father could not have this rebellious Son put to Death, till he had accused him before the Elders of the City, that is, the Judges who were establish'd in every Precinct, who, upon a solemn hearing, were to sentence such a rebellious Son to be stoned to Death by all the People of the City: Where you may observe that the Father had no Power to put him to Death himself; and therefore acted in this case, as an Accuser, or a Witness, not as a Judge. But if you'll believe *Maimonides*, one of the most Learned of the *Jewish* Rabbins, he will tell you that by the Municipal Law of the *Jews*, this Power of the Father did scarce extend beyond the thirteenth Year of the Son's Age, after which the Son was reckon'd adult, and emancipated from his Father's Power, and could not after that incur this Punishment of a stubborn and rebellious Son; and a Father who did but strike his Son after he was adult, incurr'd Excommunication, for that he offended against the Law. And tho' I grant that the Nations you mention did exercise a Power of Life and Death over their Wives and Children, yet will not the Practice of some particular Nations, tho' never so much civiliz'd, amount to a Proof of a Law of Nature, which is only to be made out from evident Rules of right Reason, and the great end of this Law, *the common good of Mankind*; and especially when against the Examples of those Nations which you produce, I can likewise set those of many more Nations, where this Custom was not allowed, after once Civil Government was establish'd.

Vid. Selden de Jure Gentium juxta Hebræos. C.

Tract. Maimuni.

And as for the *Romans* themselves, amongst whom the greatest Examples of this kind are to be found, they will not all of them amount to above three, or four, in six or seven hundred Years; and then, tho' there might be very good cause for it, yet the People of *Rome* never so much esteemed or loved such Fathers after they had put their Sons to Death, as they did before, but counted them too severe and cruel for so doing. And you may read in *Valerius Maximus*, and *Seneca*, that they killed *Erixion*, a *Roman* Gentleman, for whipping his Son to Death like a Slave; so much did they abhor all such Cruelty of Parents towards their Children. And afterwards, when by the general Corruption of Manners amongst the *Romans*, Fathers grew more cruel to their Children, and often put them to Death without cause; those of your Faculty suppose that some of the *Roman* Emperors (tho' it is uncertain who) took away this Power from Fathers, and made it (as it is now among us) Murder, for a Father to put his Son to Death; tho' others suppose (since there are no particular Edicts to be found concerning this Matter) this Law to be changed by degrees, and to be left off by common consent of the *Romans* themselves; for it seems dangerous to grant to a private Person the Cognisance of any Crime, which might belong to publick Authority; and they thought it better to strengthen both the Paternal and Marital Power by other Laws than putting to Death. And therefore *Simplicius*, upon *Epictetus*'s *Enchiridion*, says, that the *Romans* allowed Fathers this Power, because they thought they might very well trust their natural Affection to their Children, for the exercise of that Power of Selling them, or putting them to Death, which 'twas supposed they would rarely use, unless compelled by extream Necessity, or unpardonable Crimes; and therefore if a Father would put his Son to Death, he was to do it with his own Hands, that he might suffer as well as his Son; but when this tender Affection too failed, it was no wonder that the *Roman* Emperors did not think it for the common good of their People to trust Fathers with this Power any longer, which they had hitherto exercised, not so properly by right of Fatherhood, as that of the Master of a Family, who governed his Servants and his Sons by a like Authority.

De Clem.

To conclude, I cannot but observe, how slyly you wave my objection against the Divine Institution of Monarchy; for tho' you seem loth expresly to condemn all other Governments as unlawful, yet the consequence will be the same upon your Principles: For if it be a good Argument which some make use of, for the Government of the Church by Bishops, because that Government being supposed by them to have been instituted by the Apostles by Divine Precept; therefore that no other Government but Episcopacy can be lawful, or any true Church, where that Government is not in use: So the same Argument will likewise hold in Civil Governments, that all others must be unlawful, if Monarchy alone were

ordained by God, and that all other Forms whatsoever began from Rebellion, or the Fancies of Men.

M. To answer what you have said, in the first place, I cannot so slightly pass over this Argument of the Law of Nations, by which I supposed the Power of Fathers over the Persons of their Children is sufficiently established, and from whence also it appears that among the *Jews*, as well as *Romans*, the Children were look'd upon as part of the Substance of their Father, and consequently that they had a perpetual right in their Persons, as long as they lived; that the *Romans* had the Power of selling their Children three times, yourself do not deny; that the *Jews* also had it in use among them, appears first, by the Story of the Poor Woman, the Widow of one of the Sons of the Prophets, who complained to *Elisha*, in the second of *Kings*, *telling him that her Husband is dead, and the Creditor is come to take her two Sons to be Bondmen.* And so likewise in the New Testament, our Saviour in St. *Matthew* supposes it as a thing commonly practised in those parts of the World where he lived. For in the Parable of the King, who would take account of his Servants, amongst whom, one owed him Ten thousand Talents: *But forasmuch as he had nothing to pay, his Lord commanded him to be sold, and his Wife and Children, and all that he had, and payment to be made.* Which was founded upon that Law amongst the *Jews*, that Fathers might sell their Children for Bond-servants, until the Year of *Jubilee*, as appears by *Nehemiah*, Chap. 5. where he relates the Complaint of those poor *Jews*, who had been forced, for want, *to bring their Sons and their Daughters into Bondage: Neither was it in their Power to redeem them, for other Men had their Lands, and their Vineyards.*

Chap. 4. 1.

Mat. 18. 24, 25.

And amongst the *Romans*, this Power of settling their Children continued, till it was forbidden by the Emperor *Justinian*. And as for the *Grecians*, *Plutarch* in his Life of *Solon* relates, that till his time it was lawful amongst the *Athenians*, for Fathers to sell their Children to pay their own Debts: And I suppose it was upon this account, that *Cymon*, the Son of that great General *Miltiades*, was kept in Prison by the *Athenians*, till he had paid the Fine of Ten thousand Talents, which his Father died indebted to the Commonwealth. And *Philostratus* in his Life of *Apollonius Thyaneus* relates, that it was common amongst the *Phrygians* to sell their own Sons. And to come to more Modern Times; a Son amongst the *Muscovites* may be sold four times; but after the fourth Sale, the Father hath no longer a Right in him, as the Baron of *Heberstein* tells us in his Relation of *Muscovy*; and it is not only in use amongst them, but also amongst the *Tartars*, *East-Indians*, *Chineses*, and the People of *Japan*, not only to sell their Children themselves, but also, that they are liable to be sold by the Prince, or his Officers, for their Father's Debts, or Offences: So that you see here is the consent of most of the civiliz'd Nations in the World, who sure in this follow the Dictates of Nature and Reason, in the exercise of a full and absolute Propriety and Dominion, in, and over the Persons of their Children; so that if it be a received Custom or Law amongst most Nations, it is also from Reason too, *since the Law of Nations is only that which receives its obligation from the consent of many Nations*, as *Grotius* well observes: And *Aristotle* lays it down as one of the strongest Proofs, when all Men agree in any thing: And *Cicero* tells us, That the consent of most Nations is to be looked upon as a Law of Nature; and therefore these Customs are to be esteemed as obligatory amongst all civiliz'd Nations, where the Municipal Laws of those Countries have not restrained or altered this natural Power, and Interest, which Fathers had originally over the Persons of their Children.

But as for what you say, that according to my Principles, no other Government can be lawful besides Monarchy, I shall give you the same answer, that some of the most Moderate of our Divines have given to those, who would make the like Objection against us of the Church of *England*, that believe Episcopacy to be *Jure Divino*, *viz.* That God, for the necessity of some Ecclesiastical Order and Government in a Church, may permit, nay (perhaps) allow that Form of Government as lawful, which himself never instituted; nay, which perhaps was unlawful to have been set up in the Church at all: And so likewise in Civil Governments, I will not deny, that those Forms may be lawfully obeyed as the Ordinance of God, which he never instituted; but have wholly proceeded from the Rebellions, or Inventions of Men.

F. I must confess, Sir, I cannot see how any Law of Nations can be supposed to lay any Obligation upon Mankind, different from the Law of Nature, and Reason,

Reaſon, or the revealed Law of God in Scipture. And, tho' I confeſs there is ſome diviſion amongſt Learned Men about this Matter; yet I think it is far more Rational to ſuppoſe, that there are but two Laws that can be Rules of Humane Actions, the Natural Law, and the Divine. And of this Opinion is the Learned *Grotius* himſelf, in the place you but now cited, where he ſays, he added the Words, *many Nations*, becauſe there can ſcarce be found any Natural Law, which is alſo wont to be called the Law of Nations, that is common to all Nations: Yea, that is often look'd upon as a Law of Nations in one Country, which is not ſo any where elſe; as (ſays he) we ſhall ſhew in its due place, concerning Captivity, and *Poſtliminium*.

And for a farther Confirmation of this, I will make bold to read to you in *Engliſh* ſome part of what the excellent *Puffendorf* hath written upon this Subject, in his Learned Work *De Jure Naturæ & Gentium, Lib.* 2. *Cap.* 3. which you may here peruſe with me if you pleaſe. *S.* 23.

" The Law of Nature, and the Law of Nations, is accounted by many, one " and the ſame, which only differ by an extrinſick Denomination. And from " hence *Hobbs*, *De Cive*, *c.* 14. §. 4. divides the Law of Nature into the natural Law " of Men, and the natural Law of Commonwealths, which is commonly cal- " led *Jus Gentium*: And then adds, that the Precepts of both are the ſame; but " becauſe Commonwealths, when once inſtituted, do put on the Perſonal Proper- " ties of Men; that Law which ſpeaking of the Duty of particular Men, we " call natural, being applied to all Commonwealths or Nations, is called *Jus* " *Gentium*, to which Opinion we do likewiſe ſubſcribe; neither do we think there " can be any other voluntary, or poſitive Law of Nations, which can have the " power of a Law properly ſo called, and which may oblige all Nations, as pro- " ceeding from a Superior. But moſt of thoſe things, which amongſt the *Ro-* " *man* Civil Lawyers, and others, are referred to the Law of Nations; as ſup- " poſe, about the manner of acquiring of Contracts, and the like, do either be- " long to the Law of Nature, or elſe to the Civil Laws of particular Nations, " which agree together for the moſt part in theſe things; yet from which no " new or diſtinct ſort of Law can be rightly conſtituted, becauſe thoſe Laws are " common to Nations, not from any Agreement or mutual Obligation, but in " that they do by accident agree, from the peculiar Will of the Law-givers in " each particular Commonwealth; from whence the ſame things may be changed " by one People or Nation, without conſulting the reſt, and oftentimes are found to " be ſo changed." And of this he here gives us ſeveral Examples of different Cuſtoms amongſt Nations, in making War upon each other, according to diverſe Forms or tacit Agreements, whereby War may be managed with as little Cruelty as may be. But thus he proceeds; " Theſe Cuſtoms, although they may ſeem to " contain ſome Obligation, as ariſing from this ſort of tacit Agreement amongſt " Nations; yet if any Prince ſhall wage a lawful War, and neglect them, or " ſhould do quite contrary to them, he would not be guilty of any Sin againſt " the Law of Nature"; but only of a piece of Roughneſs or Incivility, that he did not make War according to thoſe Rules of Honour, which are uſed among them, by whom War is looked upon as a liberal Art. [And a little farther proceeds thus:] " Amongſt the principal Heads of the voluntary Law of Nations, " *Grotius* reckons the Right of Ambaſſadors, where we alſo ſuppoſe, that by the " very Law of Nature, Ambaſſadors are inviolable even with the Enemy, as " long as they appear Ambaſſadors, and not Spies, and do not contrive Plots " againſt thoſe to whom they are ſent. *And having ſhewn the neceſſity of Ambaſſadors* " *in order to Peace, he thus goes on*: But there are other Privileges attributed to Am- " baſſadors, eſpecially to thoſe who reſide in a place rather to fiſh out the Secrets " of another State, than for Peace ſake; thoſe Privileges depend from the meer " indulgence of that Prince to whom they are ſent, and ſo, if it ſeems good to " him, may be denied them, without the violation of any Right, if he will like- " wiſe ſuffer that his own Ambaſſadors ſhould be treated in a like manner."

M. I ſee whether this Author tends, but do not underſtand what uſe you can make of it to your purpoſe.

F. But I will quickly ſhew you, if you pleaſe to have a little Patience: And therefore to apply what I have now read to the Matter in hand; in the firſt place, it is apparent from this Author, that the Law or Cuſtom of Nations hath no Obligation as ſuch, but only as it agreeth with the Law of Nature, and the Law

of God; and what Laws of Nations are founded on the Law of Nature, can only be tried by ſome Rule, which certainly is not to be learnt from the Knowledge of the Cuſtoms or Laws of all Nations; ſince who is able to know them all? And therefore theſe Laws muſt be tried, either by the natural light of a Man's own Conſcience, or elſe by conſidering, whether this or that Practice of a Nation conduces to the honour or ſervice of God, or the common good and happineſs of Mankind, and ſo may be known as well by the Unlearned as the Learned. Now I ſuppoſe you will not affirm, that this Law of the abſolute Property and Dominion of Fathers in and over their Children, can be diſcovered by either of theſe ways; or that a Man's Conſcience will tell him, that it is his Duty to let his Father kill him or ſell him, or uſe him like a Brute, without any Contradiction or Reſiſtance. And as for the other, I think I have ſufficiently proved, that this abſolute Power, which you aſſert of Fathers over their Children, doth not proceed from that great Law of Nature, *viz.* the common Good and Preſervation of Mankind, to which the Practice of it may prove very deſtructive; which, if proved, I think I may eaſily anſwer all that you have now ſaid about the particular Cuſtoms or Laws of divers Nations concerning this matter, tho' your Inſtances were many more than they are.

For, in the firſt place, as for thoſe you alledge out of Scripture, they do (as I ſaid before) only regard the Municipal Laws of the *Jews*: Thoſe of the *Romans* touching this matter did only concern that Commonwealth whilſt it was in being, and no other Nations whatſoever. And for this Opinion I have both *Grotius* and *Puffendorf* of my ſide: For the former, in the beginning of the Chapter laſt quoted, after having ſet down the different Powers which Fathers may exerciſe over their Children, according to their different Ages, thus affirms: "Whatſoever is beyond "theſe Powers, proceeds only from a voluntary Law, which is different in divers "Places: So by the Law which God gave the *Jews*, the Power of the Father "over his Son or Daughter, to diſſolve their Vows, was not perpetual, but only "endured as long as the Children were Parts of their Father's Family.

And by the ſame Rule I may add, that Children were not reckoned as part of their Father's Goods, and to be ſold by him, or ſeized upon by Creditors for his Debts, any longer than they continued Members of their Father's Family, and conſequently were not ſeized upon as his Sons, but Servants. And I defy you to ſhew me an Example, where ever among the *Jews*, the Children, after they were adult, and parted from their Father's Houſe, were ſold or ſeized as Slaves for their Father's Debts. And as for the *Romans*, it is plain they acknowledged their *Patria Poteſtas* to be in uſe amongſt them neither by the Law of Nature or Nations, but only from their own Civil Law, as appears by this Title, almoſt at the very beginning of *Juſtinian's Inſtitutions* (which, as I ſuppoſe, you know better than I) *Inſt. L. 1. §. 2. T. 9.* *Patria Poteſtas eſt Juris Civilis & Civium Romanorum propria.* The Text follows in theſe Words (as I remember) *Jus Poteſtatis, quod in liberos habemus, proprium eſt Civium Romanorum; nulli enim alii ſunt homines, qui talem in liberos habeant poteſtatem, qualem nos habemus:* And therefore they would not permit Strangers to exerciſe it over their Children within the City of *Rome*. And if the Power of the Father amongſt the *Jews* and *Romans* was not by the Law of Nature or Nations, no more could it be ſo, tho' exerciſed amongſt never ſo many other Nations; ſince if it were one of the Laws or Precepts of Nature, it could never have been taken away or reſtrained by any Civil Law, no not by the expreſs Conſents of all Fathers. And as for your Inſtance of *Cymon* amongſt the *Athenians*, it makes nothing to this purpoſe; ſince, if I take it at the worſt, it maketh no more, than that the *Athenian* Commonwealth dealt very ungratefully and tyrannically with *Miltiades* and his Son; and it might be that they kept him Priſoner, as being Heir to his Father's Principality in the *Thracian Cherſonneſe*, out of which they ſuppoſed he might pay the Debt; as the King with us doth often put an Heir in Priſon for his Father's Debts, where he hath Aſſets by Deſcent.

But for all your other Examples, unleſs they have a Reaſon in Nature to ſupport them, they will no more prove that by the Law of Nations Fathers ſhould have a Right of Life and Death, or of ſelling their Children, than if you ſhould argue from the common Cuſtom amongſt the *Lacedemonians*, the *Aborigines* in *Italy*, the Inhabitants of the Kingdom of *Sophiris*, as amongſt the *Indians* mentioned by *Qu. Curtius*, and the *Chineſes*, and the Inhabitants of *Formoſa* at this Day; all which either did, or now do deſtroy their Children as ſoon as they are brought forth,

forth, or else in the Womb before they are born, if they please so to do. And as for some of these Nations you have instanced in, and particularly the *Muscovites*, who can sell their Children but four times, it is apparent it is only a Municipal Law; for if the Property of the Father over the Sons Persons were by them looked upon as perpetual, he might not only sell him four times, but forty, if it were possible. And after all, I suppose you will not be ty'd to follow the Practice of the *Muscovites* in other Actions, as a Pattern for other more civilized Nations.

But on the other side, I have, against this Custom of your Nations, the Examples of divers altogether as wise and civiliz'd, who did not permit Fathers to exercise this absolute Power over their Children; and therefore against your Example of the *Jews* I set that of the *Egyptians*, who did not permit Parents to put their Children to Death, nor yet to sell them, unless in case of great necessity, and when they could not otherwise maintain them; and then I grant it may be necessary. So likewise against your *Roman* Law, I set that of all the *Greek* Nations, none of whom permitted Fathers to put their Children to Death, except the *Spartans*; and that was only in one case, and that with the Judgment and Consent of the eldest Men of the Family, when their new born Infants were so weak or ill shaped, as to be thought not worth the rearing. So likewise against your Examples of the antient *Gauls*, I set that of the *Germans*, a Nation altogether as wise and civilized as the other, to whom I could likewise add the antient *Britains*, *Spaniards*, and divers others. And to the more modern Examples of the Eastern Nations, where this Custom is permitted of selling or killing their Children, I shall oppose the *Turks* and modern *Persians*, amongst whom it is forbidden, as also amongst all the Nations of *Europe*, who believe Christianity: And if we go over to *America*, we shall find that they are there so indulgent to their Children, that no Fault whatsoever, tho' never so great, shall make them put them to Death. And to let you see that this is most suitable to Reason, the two greatest Philosophers amongst the *Greeks*, *Plato* and *Aristotle*, have condemned it; the former in his Laws, where he expressly forbids it, supposing that in no case whatever a Father ought to put off all Piety and Humanity towards his Son, and that a Son should be rather led by Nature, than driven by Force, to obey his Father; especially since his Power is sufficiently established by the Law, and the appointing of publick Judges. And *Aristotle*, in his Morals to *Nicomachus*, *lib.* 8. *cap.* 12. accuses the *Jus Patrium*, then in use among the *Persians*, as tyrannical: And *Grotius* tells you, he produces these Examples of the *Romans* and *Persians*, only that we might distinguish Civil Rights from Natural. From whence it appears, that the putting of Children to death by Parents was look'd upon as an odious thing amongst the wisest of the Antients; and therefore neither the *Lex Regia*, nor the Law of the XII Tables, nor the *Julian* Law *de Adulteriis* (all which left Fathers a Power over the Lives of their Sons and Daughters) yet would extend this Power by Interpretation to the Grand-father towards his Grand-son or Grand-daughter.

Plutarch. in Lycurgo.

Vid. P. Ærodius Rerum Judicatarum L. vi. & cap. 17. *De Emendatione Liberorum.*

M. Yet for all this, I think all the wisest and most civilized Nations were of my opinion, and it is from them that we ought to take this Law of Nations rather than the others; and therefore I think the *Romans* were a great deal wiser and better People than the *Greeks*, and the antient *Gauls* than the *Germans*. Nor does your Argument against this Power of Life and Death in Fathers by the Law of Nature seem cogent, that if it were so, it could never be taken away or restrained by any Civil Law; since this Argument will make as much against that Power of Life and Death, with which you invest your Fathers of Families in the State of Nature; since if they have it by the Law of Nature, it could no more be restrained or taken away by Civil Laws, than any paternal Power in the like case.

F. I pray, Sir, hold: If this Controversy is to be decided by the Wisdom and the Civility of Nations, we shall never have done: For in the first place, who shall judge of this Consent of the most civilized People? and that no account is to be made of those whom you call barbarous; for what Nation will acknowledge it self to be so, or can arrogate so much to it self, as that it may require all others to conform themselves to their Laws and Customs; and that all Nations must be barbarous that act otherwise? Antiently the Arrogance of the *Greeks* made them look upon all other Nations as barbarous; and then the *Romans* succeeded in this foolish Conceit of themselves; and at this day we People of *Europe* (who are but a few in comparison of the rest of the World) do suppose our selves to

exceed

exceed all others in Knowledge. And yet on the other side there are divers Nations, who prefer themselves far before us; and I have read that the *Chineses* have a Saying, that the *Europeans* see with one Eye, themselves with two, but that all the rest of the World are stark blind; and yet this Nation maintains a Power of selling and exposing their Children, which we *Europeans* abhor. Now pray tell me, if there is not some common Rule to be drawn from Reason, or the common good of Mankind, how shall we judge which is in the right? So that notwithstanding all that hath been said on this Subject, I think I may safely conclude with the Judgment of the Learned *Puffendorf*, in *Lib. 6. Cap. 2.* where speaking of the Paternal Power, he says thus: "But neither the same Power, as such, seems "to extend it self to that of Life and Death by reason of any fault, but only to a "moderate Chastisement. For since this Authority is employed about an Age "that is weak and tender, and in which such incorrigible Crimes can hardly be "committed, which nothing but Life can expiate; it is much better that a "Father should turn out of doors a Son, who doth wilfully refuse through Obsti-"nacy and Wickedness all due Correction. So that Abdication and Disinheriting "seems to be the utmost Punishment which can be inflicted by a Father on a "Son, considered as such.

M. I see it is to no purpose to spend longer time about this Question; since yourself have all along allowed, that the Father of a separate Family in the State of Nature hath a Power to put his Wife or Children to Death, in case they have committed any heinous Sins or Offences against the Laws of God or Nature. But you have not yet told me (and I doubt cannot) how *Adam*, or any other Master of a Family, could be endued with this Power of Life and Death, unless it were granted him by God.

F. I promise to give you full Satisfaction to this Question by and by; but in the mean time, pray let me make it a little more plain to you, that this Power of Life and Death, which may be exercised by Masters of separate Families over their Wives and Children, in some cases, is not by any Power they receive from God, as Husbands or Fathers, but only as Heads or Masters of such Families, may be proved by this Instance: Suppose a Master of a Family, independant on any other (as in the *Indies*) hath neither Wife nor Children; yet sure he hath notwithstanding the same Power of Life and Death over his Servants or Slaves, for such great Offences as you have mentioned, in case there be no superior Power over him to take cognizance of such Crimes. And to make this yet plainer, suppose a married Man, having a Wife and Children, will live (together with them) in the Family of such a Master as I have now described (yet not as a Servant, but as an Inmate or Boarder) and whilst he so continues, his Wife kills one of her Children, or one of his Sons, murders his Brother, who hath Right to punish this Offence, but the Master in whose Family he is an Inmate? And this follows from your own Supposal: For if every separate Family in the State of Nature be a distinct independent Government, then all those that enter themselves, as Members of such a Family, must be subject to the Master or Governor of it. Nor do you reduce me into any Absurdity by your Reply to my Argument, by urging, that if the Power of Life and Death were originally in Fathers by the Law of Nature, it could never be restrain'd nor taken from them without their Consent: That then this will make as much against the like Power of Masters of Families; since I must grant, this is taken away by Civil Laws; and why may not the other? To this I reply, that you do not observe the strength of these Words, *Without their Consent*: For I suppose that no Power whatever can take this out of the hands of such Fathers, or Masters of Families, in the State of Nature; without they assign it to the Supream Powers of the Commonwealth upon its first Institution; whereas you make this Power to be obtainable by Force, by Conquest, or Usurpation, not only over those that are not at their own disposal, as Children and Servants, but over their Fathers and Masters too, without their Consents; which is contrary to the Law of Nature and Reason.

M. I see you take it for granted, that I will admit your Instance of the Power of Life and Death to be in the Masters of Families, and not as Fathers, in the State of Nature: But as plain as you think it, since you question the Power of Life and Death, which I suppose to be inherent in all Fathers; I know not why I may not with more Reason question your allowing the like Power to Masters of separate Families, since there is no reason, in my Opinion, which you can bring

for such a Power in your Masters of Families, which I cannot with like reason urge, may be also exercised by Fathers and Husbands over their Wives and Children, in case they deserve it. For if it be for the Good and Preservation of Mankind, that great and enormous Crimes, such as Murder and Adultery, should be punished, and that with Death; who is more fit to inflict these Punishments, or who can be supposed to judge more impartially of them than the Father or Husband himself? since he cannot put his Son or Wife to death, however they may deserve it, without very great reluctancy; since he, as it were, thereby lops off a Limb from his own Body. And therefore I cannot see any Reason why such a married Man as you describe should, by coming under another Man's Roof only as an Inmate or Boarder, and not as a Slave (which I grant would alter the Case) lose that Power of Life and Death, which I suppose he hath by the Laws of God and Nature over his Wife and Children, unless he had actually given it up to the Master of that Family, with whom he came to board. And therefore as I do not deny, but that a Master of a separate Family hath Power of Life and Death, and also of making Peace and War with other such Masters of Families, nay with Princes themselves, if there be occasion, as we read in *Genesis*, Ch. 14. that *Abraham* made War with the four Kings who had taken *Lot* Prisoner. So likewise when *Judah* pronounced Sentence of Death against *Thamar* his Daughter-in-law, for playing the Harlot, *Bring her forth*, says he, *and let her be burnt*; Gen. 38. I own this was not done by the Authority of a Father alone (she not being his own Daughter, and his Son being then dead) but as the Master of a separate Family, who hath (I grant) Power of Life and Death, as he is Lord over the Persons of his Children, as Servants, and consequently over their Wives also: For if he hath Power over his Son, he hath certainly the like over all that belong to him, as long as they continue Members of his Family, and that he hath not thought fit to manumit or set them free. But now I desire to know by what Right these Patriarchs could exercise all these Marks of Soveraignty, especially this great Power of Life and Death, unless it were derived from God at first; since no Man hath any Power to dispose of his own Life at his pleasure, and therefore sure hath naturally no Power over that of another Man's: So that not only this *Power* of the *Patriarchs*, but also that of all *Monarchs* to this day, must be derived from this *Divine Original*.

F. Well then, I find you're forced to quit the Power of a Father, as such, by Generation; since it plainly appears, that this Power of Life and Death, which you affirm a Husband or Father may exercise over their Wives or Children in the State of Nature, is not, *quatenus* a Father, but Lord and Master over them; which in the first place I cannot allow to be true in relation to the Wife; nor that the Submission of the Wife's Will to the Husband must imply a Power of Life and Death over her: For if she is not his Slave (as certainly she is not, for then a Man might sell his Wife when he pleased) I cannot see how she herself could convey by force of the Contract any such Power over her Life, tho' I grant indeed, if she happen to commit Murder upon one of her Children, or other Person of the Family, he may proceed against her as an Enemy, but not as a Subject; and if it be for Adultery it self, I cannot see that the Husband can by the Law of Nature punish her with Death: For since that Crime doth really dissolve the Bond of Matrimony, Divorce, or putting her away, and deserting the Child born in Adultery, was even among the *Romans* look'd upon as a sufficient Punishment. But as for the Power of Parents over their Children, I do not deny but that a Father may have the like Power over his Children whilst they are part of his Family, as over his Slaves or Servants, in case of such great and enormous Crimes as you have already mentioned; but that this is not as a Father, but Master of a Family, your self have already granted in your Instances of *Abraham* and *Judah*; tho' if you will consider the last a little better, you will find that *Judah* did not proceed thus against *Thamar*, as her Father or Master, but by some other Right: For if you please to look upon the 11th Verse of that Chapter of *Genesis*, from whence you cite this Example, you will find that *Thamar*, after the Death of *Onan* her Husband, went with *Judah*'s leave, and dwelt in her own Father's House, and she was then a Member of his Family, and consequently (according to your Hypothesis) not under *Judah*'s Power, when she was thus got with Child by him; and therefore not he, but her own Father ought to have condemned her, if this Judgment had belonged to him as to the Master of the Family. And therefore some

of the Rabbins with more reaſon ſuppoſe, that when *Judah* gave this Judgment againſt *Thamar*, he did not act either as a Father or Maſter of the Family; for he was then under the Power of the *Canaanites* (who certainly had ſome Civil Government among them at that time) and therefore they ſuppoſe that he acted thus as a Civil Judge, appointed by the Prince or ſupreme Magiſtrate of that Nation.

But to defend the Inſtance I have given you of a Father of a Family loſing his Power of Life and Death, upon his becoming a Part or Member of another Family; you your ſelf have already yielded me as much as I can reaſonably deſire for the defence of my Aſſertion, ſince you allow this Power of Life and Death to Fathers, not as ſuch, but as Lords and Maſters over their Children, as over their Slaves; and if ſo, I deſire to know who can challenge this Power but the Maſter of the Family with whom he lives, unleſs you can ſuppoſe two diſtinct Heads or Maſters in the ſame Houſe; and then they will not be one Family, but two, under different Heads, each of them ſtill retaining their diſtinct Rights. But you will ſay, that this Boarder or Inmate is not a Servant or Slave to the Maſter with whom he lives, and therefore hath not forfeited or given up his Right or Power of Life and Death over his own Children to him. It is no matter whether he did or not, ſince by making himſelf a Member of the other's Family, he ceaſed to be Maſter of his own, and conſequently muſt loſe all the natural Rights or Prerogatives belonging to it, of which I grant this of Life and Death to be the chief: For if Families in the State of Nature are like ſo many diſtinct Commonwealths, independent upon each other; it will likewiſe follow, that the Heads of thoſe Families muſt be in all things neceſſary for the Good and Preſervation of the Family, like ſo many diſtinct Civil Sovereigns, and conſequently muſt have a Power of Life and Death, and alſo of making Laws, with Puniſhments annexed to them, in all Caſes where the Good and Peace of the Family require it. If therefore in a Civil State, or Monarchy, an abſolute Prince come into the Dominions or Territories of another, it is acknowledged by all Writers on this Subject, that ſuch a Prince loſes that Power of Life and Death which he had before, and cannot exerciſe it as long as he is in the other Prince's Dominions: So by the ſame reaſon, if Maſters of Families, in the State of Nature, are like ſo many Civil Sovereigns, it will follow, that they muſt ceaſe to be ſuch, when they become Members of another's Family, unleſs you will fall into the Abſurdity of ſuppoſing two abſolute independent Heads, or Maſters, in one and the ſame Houſe; which, what a Confuſion it would bring, I leave to your ſelf to judge.

M. I ſhall not much diſpute this Power of Life and Death with you, as belonging to Maſters of ſeparate Families: But pray ſhew me how they can exerciſe this Power over the Lives of thoſe that are under their Juriſdiction, unleſs it were granted them by God, by virtue of that *original Power* given to *Adam*, not only as a Father, but Prince of his Poſterity.

F. I do not doubt but I ſhall give you a ſatisfactory Anſwer to this important Demand, without ſuppoſing any extraordinary Divine Commiſſion from God to *Adam*: For as for your Inſtance of *Abraham*'s making War, Leagues, or Covenants with other Princes, it is no more than what any Maſter of a ſeparate Family may do for his own and their defence; and what, if you or I were Maſters of a Family in the *Indies*, where there is no Power above us, we might do as well as *Abraham*; and all this without any other Commiſſion from God, than the great Right of Nature, Self-preſervation, and the Well-performance of that Truſt which God hath put into our hands, of defending and providing for our ſelves and our Families; ſince if God hath ordained the End, he hath likewiſe ordained all Means neceſſary thereunto: and therefore there is no ſuch great Myſtery in this as you ſuppoſe.

M. If there were no more in it than a mere Right of Self-defence, for which I grant Retaliation or Revenge may be alſo neceſſary, you would have a great deal of Reaſon on your ſide: But pray ſhew me how a Father, or Maſter of a Family, can condemn either his Wife, Child, or Servant to Death, as a Puniſhment for any enormous Crime, ſuch as I have mentioned (and you agreed to) without ſuch a Divine Commiſſion as I ſuppoſe *Adam* had; ſince I own Revenge or Retaliation may be uſed by private Men in the State of Nature, by the Right of Self-defence, which I grant may be exerciſed between Equals. But ſince all Puniſhments, properly taken, are the Acts of Superiors towards their Inferiors, I cannot conceive how any Father, or Maſter of a Family, can inflict ſo great a Puniſhment as Death

Death upon any Member of it, unleſs he derived this Power immediately from God, by vertue of the Divine Charter committed by him to *Adam*, and from thence to be derived to all Maſters of Families, or Civil Sovereigns, who could never derive this Power from the joint Compacts or Conſent of Fathers, or Maſters of Families; ſince no Man could convey that to another, which he had not himſelf. And I have already, I think, with a great deal of Truth aſſerted, that no Man hath Power over his own Life, to take it away when he pleaſes, and therefore cannot have it over another Man's; much leſs can convey any ſuch Right to others, except it were granted at firſt by God, in the manner I have ſuppoſed, which I conceive may eaſily be made out by ſeveral Places in *Geneſis*; by which it plainly appears, that *Adam*, and after him *Noah*, were ſupernaturally endued with this Divine Power.

F. Though I am ſatisfied that this Hypotheſis is extreamly abſurd; ſince if it were ſo, only Chriſtian or *Jewiſh* Sovereigns, or Magiſtrates, who acknowledge the Scriptures, could lay any claim to, or exerciſe this Divine Power; whereas we find it practiſed by all thoſe Nations, with whom the Memory of *Adam* and *Noah* is quite loſt, and therefore muſt claim this Prerogative, not from any revealed, but natural Law of God: Yet however, ſince you think you have ſuch clear Texts of Scripture on your ſide, I deſire you to produce them, tho', if they ſhould make out what you ſay, they would only ſerve to confirm, by Divine Revelation, that Prerogative of Life and Death, which all Maſters of Families, as well as Civil Sovereigns, enjoyed by the Law of Nature, before ever the Bible was written.

M. As for my own part, I am ſo well ſatisfied of this Supream Power of Life and Death granted at firſt by God to *Adam*, and after to *Noah*, that I cannot ſee that without the Suppoſal of this, any Supream Power could lawfully be exerciſed by Civil Sovereigns at this Day: And therefore I am of Mr. *Selden*'s Opinion, who in his moſt learned Treatiſe, *De Jure Gentium apud Hebræos*, maintains, with the *Jewiſh* Rabbins, That the Law of Nature can never be plainly proved, and made out by Reaſon, without a Tradition of its Precepts, as given by God to *Adam*, and thence conveyed to *Noah*, and his Poſterity: Which Divine Laws, or Commands, are called by the *Jews*, the Seven Precepts of *Noah*, which whatſoever People would obſerve, they permitted them to live as Inhabitants among them; though they did not embrace Circumciſion, or thoſe other Rites and Ceremonies commanded by the Law of *Moſes*. Now amongſt theſe Precepts, that of inſtituting publick Judgments for Capital Crimes, is one of the firſt, in purſuance of that Command which God gave *Noah* immediately after the Flood, *Gen.* 9. v. 6. *Whoſoever ſheddeth Man's Blood, by Man ſhall his Blood be ſhed; for in the Image of God made he Man.* By which Text almoſt all Commentators underſtand, that it is not any common Man, but the Perſon of the Civil Magiſtrate, or Sovereign, that is to be meant: Since it would be both impracticable, and alſo breed great Confuſion in Civil Societies, if by this Word *Man*, every common Perſon, not endued by God with this Supream Power of Life and Death, ſhould be underſtood; and therefore I do ſuppoſe, with the moſt learned *Jews*, that this Power was firſt exerciſed by vertue of that Divine Charter that was given of it by God to *Adam*, and then renewed again to *Noah*, by the Text above-mentioned.

Now that *Adam* had, by Divine Grant, an abſolute Dominion over the whole World, and all Creatures therein contained, will appear from *Gen.* 1. v. 27, 28. (Here is the Bible, I deſire you would read it with me.) *So God created Man in his own Image, in the Image of God created he him; Male and Female created he them: And God bleſſed them; and God ſaid unto them, Be fruitful and multiply, and repleniſh the Earth, and ſubdue it; and have dominion over the Fiſh of the Sea, and over the Fowl of the Air, and over every living thing that moveth upon the Earth.* By which Grant, or Donation, from God of ſubduing the Earth, and having dominion over the Creatures, *Adam* was made the general Lord of all things, with ſuch a particular Propriety to himſelf, as did exclude his Children from having any ſhare in it. So that if *Cain* had his Fields for Corn, or *Abel* his Flocks, and Paſture for them, it was only by *Adam*'s Grant, or Aſſignation, none of his Children or Deſcendants having any Property in Lands or Goods, without his particular Grant, or Permiſſion. F. P. O. 210, 211.

F. You muſt pardon me, Sir, if I cannot be of your Opinion, that all the Precepts of the Law of Nature muſt depend upon no firmer Foundation, than

a Tradition of the seven Precepts, supposed by the *Jewish* Rabbins to be given to *Adam*, and *Noah*, and from them conveyed to all their Posterity; since we find not the least mention of any such Precepts in the Scripture, or in *Josephus*, *Philo Judæus*, or any other antient Writer, but only in the *Talmud*: Which, though it pretends to a great Antiquity in its Traditions, yet any judicious Man that will but peruse it, may easily see the Falshood, as well as Absurdity of the pretended Tradition of these Precepts; one of which is against eating the Members of any living Creature, which savours so strongly of a *Jewish* Superstition, that if that were a true Precept, or Law of Nature, no Man could eat a Dish of Lamb-stones, or a Black-Pudding, without sinning against the Law of Nature: And it is very improbable to suppose, that all Mankind, except *Jews*, Christians, and *Mahometans*, should be obliged to live or act by those Laws or Precepts they never heard of. For if (as you your self must grant) the Memory or Tradition of these Precepts be quite lost amongst all Nations, except the *Jews*, it is all one as if they had acted without any Law at all; and consequently, if they have not some better grounds for their Observation of the Law of Nature, than these Precepts of *Noah*, I doubt whether (according to your Hypothesis) all Civil Sovereigns, that do not own the Original of their Power of Life and Death to this Divine Charter granted to *Adam*, and *Noah*, are any better than Murtherers, since they take upon them to exercise this great Prerogative without any Divine Authority for so doing. But I hope to shew you, before we have concluded this Conversation, that not only the Power of Life and Death, but also other Laws of Nature, may easily be deduced, by Reason, to have been given by God to Mankind, by the ordinary Course of his Providence, without recurring to Divine Revelation; which can only oblige those that have heard of it. But since you lay so much stress upon those Texts of Scripture you have now cited, I pray give me leave to examine, whether they will bear that Sense you put upon them. As for the first of those Texts you quote, *Whosoever sheddeth Man's Blood, by Man shall his Blood be shed*, &c. Suppose I should take it in that sense you put upon it, only to extend to Civil Sovereigns, or Magistrates, it will be so far from proving a Power of Life and Death to have been granted by God to *Adam*, and from him conveyed to *Noah*, that this Place seems to imply the contrary; for if it was a known Law before, that Murther was to be punished with Death by a Father, or other Magistrate, to what purpose was this Command now given to *Noah?* Since if it were a Divine Law before the Flood, wherefore is it here repeated? And therefore all Expositors agree, that this is the first Precept enjoining Murther to be punished by the Civil Magistrate, which, before, any of the Kin of the Person slain might have executed; as appears by *Genesis* 4. v. 14. when *Cain* said unto the Lord, *I shall be a Fugitive, and a Vagabond on the Earth; and it shall come to pass, that every one that findeth me, shall slay me*; which had been a needless fear, if none but *Adam* had a Power to take away his Life for the Murther of his Brother, as you suppose; much less that God should have needed to have set a Mark upon him to keep him from being murthered by his Brethren, or other Relations. Nor will that other Place you cite out of *Genesis* prove *Adam*'s sole Dominion over the Earth, and all the Things and Persons therein contained: For if you please to consider it, you will find, that it is so far from proving your Opinion, that it speaks the direct contrary. Pray therefore observe of whom *Moses* speaks in that Place: Surely, not of *Adam* alone, when he says, *Male and Female created he them; and God blessed them, and said unto them, Be fruitful and multiply, and replenish the Earth, and subdue it, and have Dominion over the Fish of the Sea, and over the Fowl of the Air, and over every living thing that moveth upon the Earth:* From whence we may observe, first, That these Words being directed in the plural number, both to the Male and Female, were not intended to *Adam* alone; but by way of Anticipation, not only to himself, and *Eve*, (who was not then made) but likewise to their Posterity (that is) all Mankind: Then that they should *be fruitful, and multiply, and replenish the Earth, and subdue it*, (that is, possess and enjoy it) *and have Dominion*, &c. *over every living thing that moveth* (in the *Hebrew*) creeperth upon the Face of the Earth. By which Words it appears, that not any Dominion over Mankind, but only over Brute-beasts, that move or creep upon the Earth, is hereby conferred. And that this must be the true meaning of this Place, is plain, if you will but read the two next Verses that follow. *And God said, Behold I have given you every Herb bearing*

P. n. *M. p.* 10.

bearing Seed, which is upon the Face of all the Earth; and every Tree, in which is the Fruit of a Tree yielding Seed; to you it shall be for Meat. And to every Beast of the Earth, and to every Fowl of the Air, and to every thing that creepeth upon the Earth, wherein there is Life; I have given every green Herb for Meat; and it was so. Which Words are certainly directed to the same Persons as the former (that is) to all Mankind, by the same Argument as that every green Herb is here granted for Meat to every Beast of the Earth, and every Fowl of the Air, *&c.* that then was, or ever shall exist in Nature. So that this Text, which you have cited to prove this absolute and sole Dominion of *Adam* over the Earth, and all the Creatures therein contained, is so far from proving any such thing, that it seems to me to make out the direct contrary Doctrine, *viz.* that the Earth, and all the Creatures therein, were not granted to *Adam* alone, as the sole Lord and Master of them; but in common to himself, his Wife, and all his Posterity, who had as good a right to them, as he had himself. So that I must tell you, if you intend to bring me over to your Opinion, you must produce some better Proofs out of Scripture, or Reason, than those made use of by Sir *R. F.* And therefore I desire that you would give me some plainer Proofs for *Adam*'s absolute Power over his Wife, and all his Posterity, than hitherto you have done; since I cannot see any *Divine Charter* granted by God in Scripture, of any *absolute Power*, or Dominion, over their Lives or Persons.

M. I shall, Sir, do my best Endeavour to give you all the Satisfaction I can possibly therein; therefore I desire you farther to take notice, that Mr. *Selden*, in his *Mare Clausum*, from the ancient Tradition of the *Jewish* Rabbins, *L. 1. c. 4.* has understood this Text in *Genesis*, to give *Adam* an absolute Power over the Earth, and all things therein contained, exclusive to his Posterity, as long as he lived. So that if Sir *R. F.* and divers others, have erred in the sense of this Place, I believe it is more than you or I can prove, since sure they would not have put this sense upon it, without they had some good reason for it.

But this much, I suppose, you will admit, that *Adam* was created by God, and is in Scripture called the Son of God, as indeed he was; and if so, let *Luk. 3. 27.* your self, or any other rational Man consider, whether it be at all likely that God should not endow this Son of his, the Father of Mankind, with so much Authority and Power as should enable him to govern his own Family, and Chil- *B. P. P. Sect. 32.* dren, as long as he lived, without depending upon them for their Consent, and chopping Logick with them, whether his Commands were reasonable, or lawful or not? And if a Power of Life and Death was necessary (as the Murther of *Abel* by *Cain* shews it was) whether *Adam* had no more share in that Power, than any of his Children or Grand-children: Which is sufficient to shew you the Absurdity of your Tenets, that the Authority of *Adam* over his Posterity was not absolute in its Exercise, as well as perpetual in its Duration: And this, I think, you cannot but admit, because you have already acknowledged this Power of Life and Death to proceed from, or to be granted by God to *Adam*; and so consequently must have continued with him as long as he lived.

F. Well, I perceive you find your Monarchy, or absolute Dominion of *Adam* over *Eve*, and all her Posterity, as also over all the Creatures of the Earth, not to be proved from any of these places of Scripture you have brought for this extravagant Opinion; and therefore you now urge upon me my own concession of this supream and absolute Authority of Life and Death, which I do not deny but *Adam* might have exercised in some cases over his Wife and Children, as long as they continued part of his Family: But that he was not endued with this Prerogative as a Father, but as a Head or Master of his own Family, I think I have sufficiently proved, and therefore need not repeat it. And indeed, your own Instance of the Murther of *Abel* by *Cain*, (which, for all we can find, past unpunished by *Adam*) sufficiently proves, That this Power of Life and Death over his Children or Grand-children, when once they were separated from his Family, was not a necessary Prerogative of his Government; or else that his Children, and Grand-children, when they have erected new Families of their own, had it as much from God as he; and that from the same Reason which you give, why God endowed *Adam* with it, *viz.* because without such a Power, they could not have been enabled to govern their Children and Families as long as they lived. So that *Adam*'s being created by God, or called his Son, gave him not a jot more power over his Children, and his Descendents, than what, as a Master, or

Head of a Family, he would have had by the Law of Nature however; and it is all one in this Case, whether you suppose Mankind to have been created by God, or to have existed from all Eternity, provided you hold the Being of a God, according to the Hypothesis of the more Modern *Platonists*, who though they held the Eternity of the World, yet likewise owned all things to be governed by God's Providence: And therefore, if on this Supposition Mankind could not be well governed nor preserved, without inflicting of Capital Punishments for great Crimes, and that they are necessary for its Peace and Preservation; it is likewise as necessary, that there should be some Judge appointed by God to inflict them, which in the State of Nature can be only the Head, or Master of a Family; as after Civil Government is once instituted, it belongs to the Civil Sovereign or Commonwealth. And this I hope will serve to answer your Scruple, how *Adam*, or any other Master of a separate Family, may very well be endued with this great Power of Life and Death by the Law of Nature, without supposing any Charter granted him for it by Divine Revelation; or else depending upon his Children's consent for his Exercise of it.

But before I farther consider, whether this Power of *Adam*, or of any other Father or Master, be perpetual or not, and extends any farther than his own Family, give me leave to examine, whether or no Children, when grown to years of Discretion, and even while they continue Members of their Father's Family, may not in some cases chop Logick with him, (as you call it) and not only question, but judge whether his Commands be reasonable or lawful, or not; or else *Abraham* (for Example) must have sacrificed to Idols, because his Father bid him. Whereas *Josephus* tells us, *He rather chose to quit his Country, and his Father's House, than to sin against God.* And therefore I think you cannot deny, but if Husbands or Fathers command their Wives or Children to do any thing that is morally unlawful, or contrary to the Laws of God, or Nature, they may lawfully (nay are obliged) not to obey such unlawful Commands.

Vid. Jos. *Ant. lib.* 1.

M. I shall so far agree with you, that if the thing commanded be apparently contrary to the Laws of God and Nature, that they are not obliged to obey their Commands; but they must be evidently, and apparently so, before they thus take upon them to refuse Obedience to them; otherwise I deny, that their Conscience, however misguided, ought to be any excuse, or just ground of their Disobedience. For if their Conscience be truly grounded upon the Laws of God, or Nature, that will excuse them; but if it be not, Conscience without such a Law can never do it. And yet this Non-performance of the unlawful Commands of the Husband, or Father, may very well consist without any Anarchy, or Disorder in the Family; since the Wife and Children must always yield him an active Obedience, in performing all his Commands, or else a passive one, in submitting to whatever harsh Usage, or Punishment, such a Husband, or Father, shall please to exercise or inflict upon them for their Nonperformance of them, though never so unlawful. But yet certainly in all possible and indifferent things, Children are bound to yield, not only a passive, but an active Obedience to their Father's Commands: For if his Children should have a liberty to judge of his Commands, whether they are reasonable or not, what can ensue but Anarchy and Confusion in all Families?

B. P. P. Sect. 48.

F. Well, I am glad we are so far agreed, that a Wife and Children in the state of Nature have liberty to judge of their Husband's and Father's Commands, whether they are lawful or not, and also to disobey them when they are not so: And I think I may carry this a little farther, and affirm, that such Wife and Children ought not to obey the Commands of such a Husband, or Father, though they are not really contrary to such Divine or Moral Laws, but only erroneously supposed so by them; and therefore most Casuists agree, that even an erroneous Conscience does oblige, as long as a Man lies under that mistake. For St. *Paul* tells us, *Whatsoever is not of Faith, is Sin*, Rom. 14. Nay farther, such an erroneous Conscience may excuse a Man before God, if his ignorance was not wilful, but invincible, and not proceeding from his own fault; but of this no Man can judge but God alone, and the Party whose Conscience it is; and therefore such a Husband, or Father, can have no right or authority to compel their Wives and Children to perform such Commands, because the Will ought always to follow the Dictates of the Understanding; and therefore they should not be forced to do that, which they judge contrary to God's Moral or Divine Law; *since Conscience may be instructed, but can never be forced.* Neither will your distinction

of

of an active and passive Obedience help you in this Matter: For active Obedience I understand well enough; but as for passive Obedience, I think it is next door to that we call a Bull or Nonsense. And to prove this, I shall give you this plain Instance; suppose you had *a Jew* to your Servant, and should command him to do you some Work or other on a *Saturday*, which he judged a Breach of the fourth Commandment, that forbids him to work on the seventh Day, (or Sabbath) and you being very angry, should cudgel him soundly for this refusal; whereupon he tells you, that you may beat him as long as you please, he would not resist, but yield a passive Obedience; but yet could not perform your Commands: I ask you now, whether you would rest satisfied, that this *Jewish* Servant had sufficiently performed what you bad him, by submitting to your cudgelling? And whether your Dinner or Horse would not be as much undressed after this sort of passive Obedience, as it was before?

M. Perhaps indeed this Phrase of Passive Obedience may be somewhat improper, and may be more properly termed an absolute Subjection, or Submission; but it is all one what we call it, as long as you understand what we mean; since such Submission doth sufficiently avoid that Anarchy and Confusion which would necessarily follow, in case it were lawful for Wives, or Children, in any case whatsoever, to resist their Husbands, or Fathers, though for the defence of Life it self; since no Government can be maintained, where the Parties governed have a right to resist their Superiors, or Governors, in any case.

F. I grant indeed, that no Government can be maintained, where the Parties governed resist their Superiors or Governors in the due exercise of their Power; but when they exceed those limits, they cease to act as true Superiors, or Governors; and therefore when, instead of Husbands, or Fathers, they prove Destroyers of their Families, I doubt not but they may then be lawfully resisted by them. For suppose such a Father of a Family should, in a furious or drunken fit, go about to kill his Wife, or one of his innocent Children; can any Body think this was Treason against the Monarch of the Family, if his Wife, or one of his Sons, should rescue herself, or this innocent Child, out of his Hands by force, if they could not otherwise quiet him? *P. n. M. p.* 110.

M. This supposition of Madness or Drunkenness in Fathers of Families, you Gentlemen of Commonwealth Principles make great use of, to justify your Doctrine of Resistance; and I know no reason why you might not extend it as well to Anger, Lust, or any other Passion that a Man is subject to; and have given all the World a power to judge when a Man is drunk, and mad, as well as his Wife, Children, or Servants; nor do I know why you so much insist upon it, but because the Authors from whence you had it, are so in love with Rebellion and Disorder, that they seek and catch at every opportunity to recommend it to the World. But, I believe, had you a Wife, Child, or Servant, that should take the liberty of controuling you upon this pretence, you would be more enraged with the reason of the Resistance, than with the Resistance it self. *B. P. P.* Sect. 47.

F. I am sorry, Sir, any thing I have said can so far transport you to passion, as to make such unkind Reflections upon your Friends; but pray be not so hot; is it not possible that a Master, or Father, in the State of Nature, may be mad, or drunk?

M. Yes, and is it not possible also that the Wife may be so too? Now suppose they should mutually charge each other with madness, or drinking too much, who shall judge betwixt them? What horrible Confusion must this introduce into all Societies, to give Inferiors a power to judge their Superiors to be mad, or drunk; and thereupon to resist, and oppose them with force? But if it doth at any time happen, Wives, Children, and Servants, that are dutiful, may have ways to appease their Husbands, Fathers, or Masters, when mad, or drunk, without resisting, or fighting them; as by getting out of the way, or by submission, prayers, and tears, which Nature hath taught them on such occasions to make use of; and which is a thousand times a better Method, than those violent Courses you propose. *B. P. P.* Ibid.

F. All I desire of you in this Conversation, is, that you would be pleased to believe, I do not argue out of any love to Rebellion, or Disorder, or that I desire to encourage it in private Families, much less to recommend it to the World; only what I speak, is purely out of a desire of the happiness and preservation of Mankind; and I hope I say no more, than what all sober Men will allow may be every Day practised in private Families:

And

And therefore, since you will needs have it, I do extend this Power of Resistance, not only to Madness, or Drunkenness alone, but even to Anger, Lust, or any other exorbitant Passion a Man can be subject to; and I do likewise give all the World a power to judge when such a Man is mad, or furiously passionate, as well as his Wife, Servants, or Children, if in those drunken, and mad fits, he goeth about to kill them, or any else. For I think in that Case, you will not deny, but any honest Neighbour may step in, and bind him, or hold his Hands; and so may likewise the Wife or Children themselves. As suppose, this Father, or Husband, should be so far transported with Passion, or Lust, as to go about to kill his Wife, or ravish his Daughter; I hope you will not deny, but they may lawfully resist him, if they can neither run away, nor yet pacify him by submission, prayers, or tears; which I grant are much better Methods, if they may prevail: But what if they can neither get away, nor yet any of those gentle Means you propose, can work any good upon him; what shall they do then? Can any one believe, that God hath appointed an innocent Wife, or Children, to be made a Sacrifice to the Madness, Drunkenness, Passion, or Lust of such a Father, or Husband? And as for the Case you put, where the Husband or Wife should charge each other with Madness, or drinking too much, who should judge between them? It is a meer Cavil; for as long as they fall out, and only brangle, it is no matter whether there be any Judge or not. But if it proceeds to blows, and they are like to mischief or kill each other, no doubt but the Children or Neighbours may come in and part them; and may either hold, or shut up one, or both of them, till they are sober.

M. Pray, Sir, let us leave this touchy Discourse concerning Self-defence till anon, when we shall have occasion to fall more naturally upon it. Suppose then I should at present grant you, that a Wife or Children may (in case of such extremities as may happen to them by the Madness, or Drunkenness of the Husband, or Father) restrain, or resist his violence, in case no other means can prevail; what is this to disobeying his Commands, or resisting him when he is sober? Which certainly they have no right to do. But to come as near you as possibly I can, and to let you see I am not a Man of a domineering Temper, and who approve of unnecessary Severities, or unnatural Rigours, either in Masters of Families, Husbands, or Fathers; I grant that no Father, or Master of a Family, has any right to punish, or put to death the meanest of his Slaves, much less his Children, without a sufficient cause; or that he may sell his Children, or otherwise tyrannize over them by cruel Usage, or too severe Punishments, since they are not only part of his own Substance, and to whom by the order of the Creation he gave a Being; but was also (as you well observe) ordained by God for their happiness, and preservation, as they were also (as well as his Wife) for his constant help, comfort, and subsistence; and therefore they were as much, or more, made for him, as he for them; as it is plain concerning the Wife from the Text in *Genesis*, when *God said, it is not good that the Man should be alone, I will make him an Help meet for him*, Gen. 2. 18. (*viz.*) the Woman; and therefore, as her subjection to her Husband is perpetual, as long as she lives, so likewise is that of the Children, in whom he acquireth a Property by their Education for so many Years; which I look upon as a greater obligation than their Generation; and over both whom he must in the state of Nature have an absolute Power of Life and Death; which though I grant he may happen sometimes to abuse, yet I suppose no Person living hath any right in that state to resist him in the execution of it, much less to call him to an Account, or punish him for the Male-administration of his Power. And you have granted, that the Husband in the state of Nature hath a Power of Life and Death over his Wife, if she murthers her Children, or commits any other abominable Sin against Nature; and that then she may be justly cut off from the Family, and punished as an Enemy to Mankind, and so certainly may his Children too. But what need I say any more of this Subject, when you have not as yet answered my former Arguments, concerning the Absoluteness, and Perpetuity of this Conjugal Subjection, (and that which will likewise follow from it) the constant Service and Subjection of Wives and Children to their Fathers in the state of Nature. Therefore pray, Sir, let us return again to that Head, and let me hear what you have to object against those Reasons I have bronght for it.

F. I beg your pardon, Sir, if I have not kept so close to the Point as I might have done; but you may thank your self for it, who brought me off from what I was going farther to say on that Head, by your Discourse of *Passive-Obedience* and *Non-Resistance*, and I know not what strange unintelligible Power of Life and Death, conferred by God on *Adam*, as a Husband, and a Father. But first, give me leave farther to prove, that this Subjection of the Wife is neither absolute, nor irrevocable. For Proof of which, I shall lay down these Principles. 1. That the Wife in the State of Nature, when she submits herself to the Power of her Husband, does it to live as happily as she did before, or rather to enjoy more of the comforts of Life, than in a single State. 2. That therefore she did not renounce either her own Happiness or Self-preservation. 3. Neither did she make him the sole and absolute Judge of the means that may conduce to these Ends: For if this were so, let him use her never so cruelly, or severely, she could have no cause to censure him, or complain in the least against him. 4. If she has not so absolutely given up her Will to his, she is still Judge when she is well used by him; or else so cruelly, that it is no longer to be endured. And therefore if such a Husband will not allow his Wife sufficient Food and Raiment, and other Necessaries; or that he uses her cruelly, by beating, or other Punishments, or hath endeavoured to take away her Life; in all these cases in the State of Nature, and where there is no Superior Power to complain, or appeal to, she may certainly quit him; and I think she is not bound to return, or cohabit with him again, until she is satisfied he is sorry for his former cruel Treatment of her, and is resolved to make amends for the future. But whether this Repentance be real or not, she only can be Judge, since she can only judge of her own Happiness, and the means of her Preservation. And the end of Matrimony being for their mutual happiness, and help to each other; if he has broke his part of the Compact, she is then so far discharged from hers, and consequently in the meer State of Nature (which is that we are now talking of) the *Vinculum Matrimonii* (as you Civilians term it) will be likewise dissolved: So likewise if such a Husband, for no just cause, or crime in the Wife, but only to be rid of her, should endeavour to take away her Life; as suppose, to strangle her in her Sleep, or the like, no doubt but she may (notwithstanding your Conjugal Subjection) resist him by force, and save her Life, until she can call in her Children, or Family, for her rescue and assistance; who sure may also, notwithstanding this absolute Despotick Power you place in their Father, or Master, rescue her from his Rage and Malice, whether he will or not: Nay they are bound to do it, unless they will be Accessaries to her Murther.

M. These are doubtful Cases at best, and do very seldom happen; and a Husband can scarce ever be supposed to be so wicked, as to hate, and destroy his own Flesh; and therefore we need not make Laws on purpose for Cases that so rarely happen.

F. Rarely happen! I see you are not very conversant at the *Old Baily*, nor at our Country Assizes; where if you please to come, you may often hear of Cases of this nature; and I wonder you that are a Civilian, and have so many Matrimonial Causes in your Spiritual Courts, brought by Wives for Separation, *propter Sævitiam, &c.* should doubt whether Husbands do often use their Wives so ill, that it is not to be endured. But if the Wife have these Privileges, pray tell me, why the Children shall not have the same, according to your own Maxim of *Partus sequitur Ventrem*, since the Subjection of Children must be according to your own Principles, of the same nature with that of the Mother; and then pray what becomes of this absolute and perpetual Subjection you talk of?

M. Yet I hope you will not affirm, but that Children are under higher obligations of Duty and Obedience to their Father, than a Wife is to her Husband, with whom perhaps she may in some Cases be upon equal Terms; but Children can never be so in respect of their Father, to whom they are always inferior, and ought to be absolutely subject in the State of Nature, (that is) before Civil Laws have restrained Paternal Power.

F. I thank you, Sir, for bringing me so naturally to the other Head I was coming to, and I agree with you in your other Maxim, of *Quicquid ex me & uxore mea nascitur in potestate mea est*, yet not in your Sense: For if I should grant, that the Father's Power over the Child commences from his Power over the Mother, by her becoming his Wife, and submitting herself, and consequently all

the Issue that should be begotten of her, to her Husband's Power; yet as I have prov'd already in case of the Wife, so I think I may affirm the same in that of the Children, that they are not deliver'd by God so absolutely to the Father's Will, or Disposal, as that they have no Right, when they attain to Years of discretion, to seek their own Happiness and Preservation in another place, in case the Father uses them as Slaves, or else goes about to take away their Lives without any just cause; since when Children are at those Years, I think they are by the Laws of Nature, sufficient Judges of their own Happiness, or Misery, that is, whether they are well, or ill used; and whether their Lives are in danger, or not, by their Father's Cruelty.

For tho' I grant that Children, considered as such, are always inferior to their Parents; yet I must likewise affirm, that in another respect, as they are Men, and make a part of that great aggregate Body of Mankind, they are in all Points equal to them; that is, as the Parents have a right to Life, Happiness, and Self-preservation, so have they likewise; and consequently to all necessary means thereunto, such as Food, Cloaths, Liberty, (I mean from being used as Slaves) which Principles, if true, will likewise serve for a farther Proof against that absolute Property, and Dominion, you supposed to be conferred on *Adam* over the Earth, and all things therein, exclusive to that of his Wife and Children. For if they had a Right to a Being and Self-preservation, whether he would or not, so had they likewise to all the means necessary thereunto; and he was not only obliged to provide Food and Raiment for his Children, whilst they were unable to do it for themselves, but also when they grew up to years of discretion, they might take it without his Assignment, and this by virtue of that Grant in *Genesis* I before quoted; *And God said*, Gen. 1. (*viz.* to the Man and the Woman, and in them to all Mankind, then in their Loins) *Behold, I have given you every Herb bearing Seed, which is upon the face of the Earth*, &c. *Behold, to you it shall be for Meat.* So that sure you were too rash, in affirming with Sir *R. F.* that a Son, a Slave, and a Servant, were all one at the first: For I hope I have proved, the Father doth not acquire any absolute Property in the Person of the Son, either by his begetting him, or bringing him up; for then I grant, a Son and a Slave would be all one. But if you please better to consider it, you will find, that Fathers were never ordained by God for perpetual Lords and Masters over their Children, but rather as Tutors and Guardians, till they are of Years of discretion, and able to shift for themselves; God having designed the Father to beget and bring up his Child, not for his own interest or advantage only, but rather for the Child's happiness and preservation, which by the Laws of God and Nature he is bound to procure: For as it is the Son's Duty never to do any Action, that may make his Father repent his begetting, or bringing him up; so on the other side, the Father ought not to treat his Son so severely, as to make him weary of his Family, much less of his Life. It is the Apostle's Precept, *Ephes. 6. 4. Parents provoke not your Children to wrath*; which certainly he knew they were apt to do, or else that Precept had been needless. Now pray tell me, if *Adam* had used one of his Sons (whom he loved worse than the rest) so cruelly, as to make him a Slave instead of a Son, and when grown a Man, should have put him to all the servile and hard Labour imaginable, with scarce Victuals enough to live upon, or Cloaths to cover him; what must this Son have done? born all patiently? Or else do you think it had been a damnable Sin, if he had fled into the Land of *Nod*, to *Cain* his elder Brother?

B. P. P. c. 2. Sect. 9.

M. To answer your question, I think in the first place it had; for I do not only take *Cain* to have been the first Murderer, but Rebel too: And in the next place this Question is needless; for it can scarce be supposed, that ever *Adam*, or any Father can be so wicked and ill-natured, as to use a Son thus cruelly, without some just occasion; but if he had, I think he ought to have endured any thing from his Father, rather than have left him without his leave, since I cannot see how Children can ever set themselves free from their Father's Power, whether they will or no.

F. If that be the condition of Children, they are then, instead of Sons, as absolute Slaves as any in *Turkey*, whenever their Father pleases. But you have already granted, that Fathers ought not to use their Children like Slaves, nor to sell them for such to others; and tho' I have no great kindness for *Cain*, yet I know not what warrant you have to call him Rebel: I am sure neither the Scripture, nor *Josephus*, mention his going to the Land of *Nod*, as an offence com-

committed againſt his King and Father, *Adam*; but rather as a piece of Compliance or Obedience to God's Sentence, who had made it part of his Curſe ſo to do.

M. I ſhall not much trouble my ſelf whether *Cain* was a Rebel or not; I only tell you what ſome Learned Men have thought of his quitting his Country; but as for other Children, tho' I grant their Fathers ought not to uſe them like Slaves, yet if they ſhould happen to do ſo, I think ſuch Children ought to bear it as a Judgment inflicted by God for their Sins, and ſhould not by any means ſet themſelves free, tho' their Fathers uſe them never ſo ſeverely; ſince it is God's Will they ſhould be born, and continue under the Power of ſuch ſevere Fathers.

F. But pray, Sir, tell me: What if this Son had fallen into the power of a Stranger who would thus make a Slave of him, was he likewiſe bound to bear this as a Puniſhment from God for his Sins, and might he by no means ſet himſelf free? ſince this could not happen without God's permiſſive Providence at leaſt; and I think you will ſcarce prove it more in the Caſe of the Father, unleſs you will allow God to be the Author of Tyranny and Oppreſſion.

M. I grant, that a Man that is made a Slave to a Stranger by force, without juſt cauſe given by him, may ſet himſelf free by what means he can; but I deny he hath the ſame Liberty in reſpect of his Father, ſince the Father's Power over him is from God, and ſo is not the Stranger's.

F. What Power of the Father do you mean? that of making his Son a Slave, or of uſing him as a Father ought to uſe a Son? The latter of theſe I very well underſtand to be from God, but not the former: And if the Father hath no ſuch Power from God, I cannot ſee how it can be any Act of Diſobedience in a Son to look to his own Liberty and Preſervation; ſince Cruelty and Tyranny can never be Prerogatives of Paternal Power, as you your ſelf confeſs.

M. I grant, indeed, a Father hath no ſuch Power from God to treat his Son thus cruelly; but if he does, I ſay again, that God having ordained the Son to be abſolutely ſubject to his Father, he muſt endure it, let the conſequence of it be what it will: And I ſuppoſe you will not deny, but that in caſe of neceſſity, as when a Father hath not wherewithal to nouriſh and breed up his Children, he may ſell or aſſign his Intereſt in them to any Perſon, who will undertake to provide for their Nouriſhment and Education; and that the Children ſo ſold, or aſſigned, do thereby become abſolute Servants to the Perſon to whom they were thus aſſigned as long as they lived; and why this ſhould be their Condition in reſpect of a Stranger, and not ſo to their Father, I can ſee no reaſon, ſince their Father would have been at as much trouble and charge for their Education as the Stranger.

F. I ſo far go along with you, that in caſe of ſuch neceſſity as you mention, a Father may ſell or aſſign the preſent Intereſt in his Child to a Stranger: yet I cannot ſee any reaſon that this Sale, or Aſſignment, ſhould confer ſo abſolute a Property in the Perſon of this Child, as that therefore he ſhould be a Slave to this Maſter, or Foſterer, as long as he lived: Since admitting that the Father, or other Perſon who takes upon him that Care, may perhaps juſtly claim a Right in the Service or Labour of the Child, to ſatisfy them for their trouble and charge in bringing him up; yet it doth not therefore follow, that this Service is due as long as the Child lives, but rather until ſuch time as they can make their Labour ſatisfy them for their charge and trouble in keeping him, which may very well be by that time the Child attains to twenty five Years of Age at fartheſt: And there are thoſe that have offered to breed up and maintain all the Foundlings and Baſtard Children in *England*, if they may be bound to ſerve them until about that Age. So that I ſee no reaſon why a few Years of Education ſhould give any Man a Right over another's Perſon as long as he lived.

But if you urge, that the Child owed his Life to his Father, or Foſterer, ſince without his aſſiſtance he muſt have periſhed, and therefore the Service of the Child's whole Life is but little enough to recompence it: To this I anſwer, That the Parents are under an abſolute Obligation, by the Laws of God and Nature, to breed up their Child, and they ſin, if they do not perform it as they ought; the end of a Father being chiefly for the breeding up and preſervation of the Child; and therefore there is no reaſon he ſhould acquire ſuch a Property in him, merely becauſe he did his Duty: And the Duty of a Father being to better the Condition of his Son, and not to make it worſe, I doubt whether an abſolute and perpetual

Servitude, or Death it ſelf, were the better bargain. And if this Right will not hold for the Father himſelf, much leſs will it for a Foſterer, ſince he is likewiſe obliged by the Laws of Nature and common Humanity, as well as by his Contract with the Father, to breed up this Child ſo aſſigned him; and not to let him periſh, if he be able to breed him up. Nor ought this Father's or Fosterer's temporal Advantage, which he may make of this Child, to be the principal end of his Undertaking; but the doing good to Mankind, and the Advantage he may reap thereby, is to be conſidered only as an Encouragement, and not as the only Motive to this Duty, ſince he is obliged to do the ſame thing, tho' he were ſure the Child would either die or be taken away from him, before he could be with him half long enough to ſatisfy him for his Charge.

Neither doth this Reaſon hold true, even according to the Scripture Rules of Gratitude, that a Man hath a Right to exact, of one to whom he hath done a Courteſy, or beſtowed a Benefit, a Return as great as the Benefit beſtowed; ſince this were not Beneficence, but meer Bartering or Exchange; and a Man who had his Life ſaved by another's aſſiſtance (ſuppoſe by pulling him out of the Water) muſt be obliged by this Principle to ſubmit his Life to his diſpoſal ever after. And therefore I deſire you would give me ſome better Reaſons, why ſuch a Son ought to be ſo abſolutely ſubject to his Father's Power, as that it is not lawful for him, upon any account whatſoever, to free himſelf from it, let his Father uſe him never ſo cruelly or ſeverely.

M. Well, Sir, ſince you deſire it, I will give you the beſt Reaſons I have, why God cannot permit ſo unreaſonable a Liberty as this would give to all Children, in caſe they ſhould make uſe of it whenever they thought fit; and therefore God hath ordained it thus, to take away all thoſe Pretences of Undutifulneſs and Diſobedience, which Children might make, ſhould they be permitted to be their own Judges, when they might quit their Father's Family without his leave; which Pretence of cruel Uſage they would be ſure to make uſe of, thereby to leave their Parents upon every ſlight occaſion, ſaying, that their Fathers were ſo cruel and ſevere, that there was no living with them any longer; when indeed it was not ſo, but on the contrary, no juſt Cauſe of Complaint againſt them, more than bare correcting them for their Faults: And ſo the Father might be bereft of ſome, nay all his Children, who ſhould be helpful and ſerviceable to him in his old Age, which would breed great Confuſion and Inconveniences in Families, eſpecially in the State of Nature; as in the Caſe you have put concerning *Adam*'s Sons, they being the only Servants he could have to make uſe of on all Occaſions.

F. I deſire you in the firſt place to take notice, that I put this Caſe concerning *Adam* by way of Suppoſition only; not but that I have a better Opinion of our firſt Parent (notwithſtanding his Fall) than to believe him ſo ill-natur'd, or that he was ever ſo cruel as to uſe his Children thus hardly. But in this depraved State of Nature ſuch unnatural Rigors and Cruelties in Fathers, as well as Diſobedience in Children, is but too frequent; which no Man needs to doubt of, that will but conſult the Cuſtom of divers Nations in *Africa*, and other Countries, at this day; where they ſell their Sons for Slaves, and exerciſe this Fatherly Power with the greateſt Tyranny and Rigor, uſing them as Slaves, or ſelling them to others for ſuch things as they want. And if you think it againſt the Law of Nature for ſuch Children, when they ſee themſelves ready to be ſold to work in the Mines in *Peru*, or Sugar-works at *Barbadoes*, to run away into another Country to avoid ſuch a Condition, which is as bad or worſe than Death, you may enjoy your own Opinion; but I am ſure you'll have but few Proſelytes, but ſuch as are of the like arbitrary Principles. And as for your Pretence, that if Children ſhould be allowed to judge when their Fathers treated them too ſeverely, or like Slaves, they would all run away; that is but a Subterfuge: For firſt, it is a needleſs Caution, Children being, when young, not apt to leave their Parents who have bred them up, upon whom they depend for their Subſiſtence, and to whom, if they are treated like Children, they ſeldom fail to bear a natural Duty and Affection; and if well uſed, they will, when of Years of Diſcretion, be likewiſe willing to ſtay with them, and look after them when ſick or old; not only for Duty, but alſo for their own advantage, and in hopes of having a ſhare in what Goods or Eſtates they may leave behind them when they die. But if, when they come to Years of diſcretion, they can better their condition by marrying, and leaving their Father's Family, their Parents are bound in conſcience to let them go; ſince

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it is their Duty to better the Condition of their Children, and not to make it worse: Always provided that such Children either take care of their Parents themselves, or else hire others to do it for them, in case they want their Assistance by reason of their old Age, Poverty, or Sickness. But if Children may not quit their Father's Families, tho' they are never so hardly or severely dealt with, the consequence will be, that Fathers may keep their Children as Slaves as long as they live, tho' it were to a hundred Years, or else may sell them to others, to be used worse, if possible; the Absurdity of which Assertions, and how contrary to the common Good of Mankind, I might leave to any indifferent Person to judge of.

Therefore, I think, I may very well (according to the Learned *Grotius*) divide the Lives of Children into *three Periods* of Ages. The *first* is the Period of Infancy or imperfect Judgment, before the Child comes to be able to exercise his Reason. The *second* is the Period of perfect Judgment or Discretion, yet whilst the Child continues still part of his Father's Family. The *third* is, after he hath left his Father's, and enter'd into another Family, or sets up a Family himself. In the *first Period*, all the Actions of Children are under the absolute Government of their Parents: For since they have not the Use of Reason, nor are able to judge what is good or bad for themselves, they could not grow up nor be preserv'd, unless their Parents judged for them what means best conduced to this end; yet this Power is still to be directed to the principal End, *viz.* the Good and Preservation of the Child. In the *second Period*, when they are of mature Judgment, yet continue part of their Father's Family, they are still under their Father's Command, and ought to be obedient to it in all Actions which tend to the Good of their Father's Family and Concerns. And in both these Ages I allow the Father has a Right to make his Children work, as well to enable them to get their own Living, as also to recompence himself for the pains and care he has taken, and the charge he may have been at in their Education, and also to correct them, in case they refuse to work or obey his Commands. But in other Actions the Children have a Power of acting freely, yet still with a respect of gratifying and pleasing their Parents, to whom they are obliged for their Being and Education; since without their care they could not have attain'd to that Age. But this Duty being not by force of any absolute Subjection, but only of Piety, Gratitude and Obsetvance, it does not make void any Act, tho' done contrary to their Duty. The *third* and *last Period* is, when the Son, being of Years of discretion, either by Marriage or otherwise is separated from his Father's Family: In which case he is in all Actions free, and at his own disposal, tho' still with respect to those Duties of Piety and Observance, which such a Son must always owe his Father, the Cause thereof being perpetual.

M. I must beg your pardon if I cannot come over to your Opinion, notwithstanding all you have said in this long Discourse; since I cannot conceive how in any case Children can naturally have a Power or moral Faculty of doing what they will without their Parents Leave, since they are always bound to study to please them: And tho', by the Laws of some Nations, Children when they attain to Years of Discretion have a Power and Liberty in many Actions; yet this Liberty is granted them by positive and humane Laws only, which are made by the Supream Fatherly Power of Princes, who can regulate, limit, or assume the Authority of inferior Fathers, for the publick Benefit of the Commonwealth. So that naturally the Power of Parents over their Children never ceases by any Separations, tho', by the permission of the transcendent Fatherly Power of the Supream Prince, Children may be dispens'd with or privileged in some cases from Obedience to subordinate Parents. *F. O. G. p.* 22,

F. And I must beg your pardon, Sir, if I cannot alter my Opinion in this matter, for all that you have now said, since you can give me no better Reasons than what you did at first: And tho' you say, you cannot conceive how Children can ever in any case have a Power or moral Faculty of doing what they will without their Parents Leave, yet they may have such Power in many cases, whether you can conceive it or no. For tho' I do grant, that Children are always bound to study to please their Parents, yet doth not this Duty of Gratitude or Complacency include a full and perfect Dominion of Fathers, in the State of Nature, over the Persons of their Children, and an absolute Power over them in all cases whatsoever, so that the Children can have no Right to consult their own Good or Preservation, *P. n. M.* 20, 21.

ſervation, however it may be endangered by their Father's Paſſion or ill Nature: Since a Wife is always obliged to this Duty of Complacency to her Husband; yet is not this ſo abſolute, but that in the State of Nature ſhe may quit his Family in thoſe Caſes I have already mentſoned, and againſt which you had nothing to object. And I deny your Poſition, that Children, when they attain to Years of Diſcretion, derive that Power and Liberty they uſe in many Actions from poſitive Humane Laws only; or that the Power which Parents naturally have over their Children can never ceaſe by any Separation, but only by the permiſſion of the Father.

For as for *Bodin*, and divers others that have written on this Subject, they do no more than follow others, who have aſſerted this abſolute Power of Fathers upon no better grounds than the Civil or *Roman* Municipal Laws, without ever troubling themſelves to look into the true Original of Paternal Authority or Filial Subjection, according to the Laws of Reaſon or Nature. And moſt Treatiſes of this Subject being commonly writ by Fathers, no wonder if they have been very exact in ſetting forth their own Power over their Children, but have ſaid little or nothing of the Rights of Children in the State of Nature; and therefore I ſhall farther let you ſee, that this Duty of Children, even of pleaſing or obeying their Parents, can only extend to ſuch things as they may reaſonably or lawfully command. For ſuppoſe that *Adam* had commanded ſome of his Sons or Daughters never to marry, you cannot deny but this Command had been void (that being the only means then appointed to propagate Mankind:) For when there then lay a higher Obligation upon them to increaſe and multiply than there is now, they might then certainly have choſen Wives for themſelves, when they were of Years of diſcretion, and capable of Marriage.

And farther to ſhew you, that Children may in ſome Caſes ſeparate themſelves from their Father's Family and Subjection, without their Father's Conſent, is apparent as to the Daughters, who if they were at firſt obliged by this Precept to marry, might likewiſe do it whether he would or not, and were to be obedient to their Husbands when they were married, the Obedience which they before owed to their Father being now transferred to their Husband; or elſe they muſt ſerve two Maſters, which is againſt our Saviour's Rule. By which it appears, that the Subjection of Daughters in the State of Nature is not perpetual: And to prove that Sons have a like Right to ſeparate from their Father's Family, let us ſuppoſe that *Adam* had been ſo cruel and unnatural as ſome Fathers are; that being only ſenſible of the Profit he received from his Sons Labours, he would never have permitted them to leave his Family, nor to enjoy any thing of their own, but would have kept them like Slaves as long as they lived: If you affirm, that he might have done ſo if he had pleaſed, and that the Sons had no lawful means to help themſelves, ſince he only was Judge whether ever he thought fit to ſet them free or not; you your ſelf have already granted the contrary, when you affirmed, that a Father had no Right to ſell his Child as a Slave; and then ſure he can have as little Right to uſe him ſo himſelf.

But as for what you ſay againſt that natural Equality of Children to their Parents, conſidered as Men, you might eaſily have underſtood it, if your Thoughts were not ſo wholly taken up with this tranſcendent imaginary Empire of Fathers in the State of Nature, as if they were ſomewhat more than Men: For pray tell me, are they not equal, who have the ſame Right from God to the ſame things? For if Fathers have a Right to live and be preſerved, ſo likewiſe have the Children; and if they have a Right to the End, they have likewiſe the ſame to the Means neceſſary thereunto, ſuch as are Food, Raiment, Freedom from Slavery, *&c.* And if they are thus equal, they muſt likewiſe, when they attain to Years of diſcretion, be endued with a Power of judging for themſelves, concerning what things are neceſſary to their Happineſs and Preſervation, and what tends to their Miſery or Deſtruction; and conſequently may very well judge whether their Fathers treat them kindly or cruelly: For if the Father in the State of Nature is the ſole Judge of the Means that conduce to his Son's Happineſs and Preſervation, without his Conſent he may determine, that Poverty, Slavery, and Torment, ſhall be fit Means, and conducing to this End, which is againſt Senſe and Reaſon. And tho' I grant, that Sons may ſometimes be miſtaken in the true Means that may lead to theſe great Ends of Life; yet doth not this take away their Right of judging for themſelves, any more than it doth the ſame Right from their Fathers, who as Men are alſo liable to the like Miſtakes. Neither did any Slave or Subject

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ever give up his Will ſo totally to his Maſter or Monarch, as abſolutely to renounce all Right to Happineſs and Self-preſervation, or to the Means that may conduce thereunto. But I think we have ſufficiently debated this great Point of the natural Power of Fathers over their Children: And therefore

Let us in the next place conſider, whether Children may not upon theſe Principles in ſome caſes make uſe alſo of Self-defence, even againſt their Fathers, if they cannot otherwiſe avoid certain Ruin and Deſtruction: Therefore I will firſt ask you what you think of this Caſe? A Son in the State of Nature being ſeparated from his Father's Family, and having Children and Houſe of his own, what ſhall he do in caſe his Father, by the evil Suggeſtions of a Stepmother, or other wicked Perſons, be ſo far incenſed againſt his Son, as to ſend Men to burn his Houſe, plunder him of his Goods, and deſtroy his Plantation?

M. If the Son be abſolutely ſet free from his Father's Family and Power with his conſent, I do not deny but that ſuch a Son may reſiſt thoſe Perſons his Father ſends to ruin him and his Family, and may repel their Violence by force; but I do not allow the Son the ſame Power to reſiſt the Perſon of the Father, if he ſhould come himſelf thus to deſtroy him.

F. Why ſo? Do you think a Father, by being ſo, hath any greater Right to deſtroy his Son and ruin his Family than a Stranger?

M. No; but becauſe the Perſon of a Father ought always to be eſteemed by the Son as ſacred as his natural Prince; and if he ſhould have a Right to reſiſt his Father by force, he might happen to kill him in the Scuffle, which would be a Sin againſt Nature.

F. Well, ſuppoſe the worſt, would this me more a Sin againſt Nature, than to ſuffer himſelf, Wife, and innocent Children, to be turned out of all they have, and left to periſh by Hunger and Cold? St. *Paul* ſays, *That he that doth not provide for his Family is worſe than an Infidel*; and, I think, ſo would the Son be, if, for fear of hurting his Father's Perſon, he ſhould permit all his Family to be expoſed to certain Beggary and Ruin.

M. This Precept of St. *Paul* obliges only, when a Man may provide for his Family by lawful means, but not when it cannot be procured but by doing what is unlawful, as I take this Reſiſtance of the Perſon of the Father to be.

F. I grant indeed that a Father, acting as ſuch, is not to be reſiſted, even when he corrects his Son; but I ſuppoſe you will not ſay, that in the caſe I put he acts as a Father, but an Enemy, when he goeth about without any juſt Occaſion to kill or ruin him; unleſs you can ſuppoſe, that the Will to preſerve and deſtroy can conſiſt together in the ſame Subject: Neither can you affirm, that the Father hath any Right to deal thus wickedly and violently towards his Son and his innocent Family. By what Law then muſt the Son be obliged to ſacrifice his own Life, and that of Wife and Children, and all that he hath, to this imaginary Duty?

M. There ſeems to me two good Reaſons for it: The firſt is that Gratitude which the Son muſt always owe his Father for his Being and Education; and therefore if he give up his Wife, Children, and all that he hath to his Will, it would ſcarce be a ſufficient Requital for all the Benefits he hath received from him. The ſecond is, becauſe no Circumſtances whatſoever can take off or obliterate this Relation: And tho' 'tis true your Father, whilſt acting thus, doth not deal with you as a Father, but an Enemy; yet he is ſtill your Father, and you are and will be always his Son, do what you can, and ſo conſequently you will ſtill owe him Subjection. For it is a Maxim not only of the Civil Law, but that of Nature too, and this moſt of all in the State of Nature, that is, before Civil Laws had reſtrained the Paternal Power, *Jura ſanguinis nullo delicto dirimi poſſunt*; and laſtly from the fourth Commandment of, *Honour thy Father*, &c. Now no Man can render Honour to him whom he goeth about to reſiſt, and ſo may alſo deſtroy. B. 1. n. ſ. 19.

F. I confeſs you have urged this Argument as home as the thing will bear; but yet I think I can ſhew you, that the Son is ſo far from acting againſt the Law of Nature in thus reſiſting his Father, that I think he would rather tranſgreſs it, if he acted otherwiſe. But firſt to anſwer your Arguments, I deny that either Generation or Education do confer ſo great a Benefit, that a Man is obliged to ſacrifice himſelf, his Wife, and Children, and all that he hath, in return for it.

First for Generation: I suppose you will not much insist on that, since you must grant that a Father doth not act in that matter as a voluntary, but natural Agent; neither is it in his power to hinder the Child that he gets from being conceived or born; neither did he get him so much to propagate his Species, as to gratify his own present natural Appetite.

Then for Education, which I grant is much the greater Obligation, since by the former I am only born an irrational helpless Creature, but by the other I am made a reasonable Man, able to help and provide for my self, and knowing my Duty to God and other Men; yet even these Obligations are not great enough to make me sacrifice my self and all that I have to his Fury or Humour. I grant indeed, that if it were to save a kind Father's Life, a Son may be obliged to venture, nay lay down his Life to perform it; but I deny, that even for such a Father he hath a Right to give up the Lives of others, which are not at his disposal (as those of his Wife and Children are not) in this case. For this were not only to return more than was first given, but also to pay Debts with that which is not my own; and to give up their Lives, and let my Father take them away, is all one, if I can hinder it: *Qui non prohibet, facit.* Then as for the Relation of a Father, which you say no Fault of his can obliterate or destroy, you must grant that it may be suspended for a time: As, when a Man binds or resists his mad or drunken Father, who would kill him or his Wife or Children, he doth not do it to the Father, but to the mad Man or Drunkard; and so likewise in this case, he doth not resist his Father, but a furious unreasonable Creature, who is so far from behaving himself as becomes a Father, that he doth not act like a Man. Nor doth your Maxim hold true in all Cases, and therefore is no Law of Nature; for *Jura sanguinis aliquo delicto dirimi possunt*, or else a Father could never put his Son to death for any Crime whatever, which you have affirmed he may: But certainly when he acts thus, it is not as a Father, nor doth he destroy him as a Son, but an Enemy or Malefactor.

Now I desire you or any indifferent Man to consider, since the common Good of Mankind is the Sum of all the Laws of Nature, and the great Rule by which they are to be tried, which Rule is to be preferred, and conduces more thereunto, when they cannot consist at once or together: That a Father, who by your own confession comes to do an unlawful wicked Action, *viz.* to ruin and destroy his Son, with his Wife and Children, should be resisted, and consequently one Man's Life put in hazard; than that many innocent Persons should be ruined, and perhaps starved to death for want of Food and Shelter. And as for the fifth Commandment, that extends no more to the Father than to the Mother; tho' you are pleased to leave her out, because it makes against your Opinion: And therefore if by *honour* is meant, *Thou shalt not resist*; then no Man should resist his Mother any more than his Father, if she went about to kill him; and yet not the Mother, but the Father, is by your Hypothesis the natural Monarch, that hath this Power of Life and Death over the Son. But let us pursue this Point no farther; if you will not be convinced, I cannot help it.

But pray tell me now, what a Son must do, if his Father, transported by Fury and Malice, should go about to kill him with a Sword or other Weapon, and that he hath no other way left to save his Life, neither by Intreaty nor Flight (which I grant ought to be done if possible) whether he may resist his Father with what next comes to hand, or suffer himself to be killed?

M. I am much better satisfied in this case than in the other, that he ought rather to let his Father take away his Life than resist him, since here is but one Life to be lost; whereas, I confess, the other Case was harder, because there were more Lives concerned than the Son's; and I am of this opinion partly for the same Reasons as before, and partly because 'tis more suitable both to Reason and the Law of Nature, as also to Holy Scripture, Precepts and Examples: For if St. *Peter* command *Servants to be subject to their Masters*, &c. not only to the Good and Gentle, but also to the Froward; and if Servants, much more Sons, who owe their Fathers a higher Duty and Obedience than Servants can owe their Masters; and *Isaac* was so far convinced that his Father *Abraham* had Power over his Life, that tho' he was a lusty young Man, and could carry Wood enough to consume a Burnt-offering, yet do we not find that he offered in the least to resist his Father, when he was about to bind him to be sacrificed: For he very well knew, that his Father could not be resisted without endangering his Life, if not taking it away

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in the Scuffle. And ſure you will grant, that a Son ought rather of the two to let his Father kill him, than he take away his Life, by whoſe means he received his own; eſpecially ſince *Abraham* was the Maſter of a great Family, and in whoſe Life and Well-being not only his Mother, but all the Family, had an Intereſt, as neceſſary for their Well-being and Happineſs. Nor can I think, that *Abraham* would have ſo readily aſſented to God's Command for the doing of it, had he not been already ſatisfied, that he had an unaccountable Power of Life and Death over his Son by the Laws of God and Nature.

F. In the firſt place to anſwer your Authorities from Scripture; as for that Place of St. *Peter* you have cited, it is not a Precept given by the Apoſtle to Sons, but to Servants or Slaves, whoſe Lives and all that they had were at their Maſters abſolute diſpoſal, being thoſe whom the Apoſtle *Paul* calls, *Servants under the Yoke*; and unleſs you will make a Slave and a Son to be all one (which you have already denied) this Precept doth not at all concern them. And as for the Example of *Iſaac*, that will make as little for your advantage; for firſt, as to *Abraham*, he could not but know, that to kill his Son without any juſt Cauſe, was as much Murder in him as in any other Man. Now what could be a juſter or a higher Cauſe than God's particular Command? So that as this Act of *Abraham* is not to be taken as an Example by other Fathers, ſo neither doth the Example of *Iſaac* oblige other Sons to the like Submiſſion; therefore it is moſt reaſonable to ſuppoſe, that *Iſaac* being then (as Chronologers make him to be) about nineteen or twenty Years of age, and of Years of diſcretion to ask, where was the Lamb for the Burnt-offering, was alſo inſtructed by his Father, before he came to be offered, of the reaſon of his dealing thus with him; and then the Submiſſion was not payed to his Father's, but to God's Will, from whom he miraculouſly received his Being. But if any Man doubt whether Reſiſtance in ſuch a caſe were lawful, I leave it to his own Conſcience to conſider, whether, if his Father had him alone in a Place where he could neither run away, nor yet call for Help, he would ſuffer his Father to cut his Throat without any Reſiſtance, only becauſe he pretended Divine Revelation for it. Not but that I ſo far agree with you likewiſe, as to limit ſuch a Reſiſtance only to the holding his Father's Hands, or warding off his Blows, but not to the taking away his Life; but of the two, rather to loſe his own than to kill him, for the Reaſons you have given, and which I will not deny: But yet if the Father be mad, I doubt whether the Son is bound to let him kill him rather than take away his Life, ſince ſuch a Father's Life is no way uſeful to the Good of the Family. So that tho' I ſhould grant that Paternal Power is from God, and conſequently irreſiſtible, yet doth it not follow, that all the unjuſt Force or Violence, which a Father as a Man may uſe againſt his Son's Life or Fortune, is ſuch part of a Paternal Power, as God hath commanded us not to reſiſt; ſince you your ſelf muſt grant, that he doth not thus act (in going about to kill his Son) as a Father, but a violent and wicked Man: So that where the Father hath no Right to take away his Son's Life, I think in all ſuch Caſes the Right of the Son to reſiſt him doth take place. And if a Man may reſiſt or bind his Father, when he is mad or drunk, and in ſuch Fits goeth about to kill him, I can ſee nothing to the contrary why he may not do the ſame thing, when his Father is tranſported by a ſudden Rage or unreaſonable Malice; ſince both of them do take away the Uſe of natural Reaſon, as much the one as the other, according to that Saying of the Poet, *Ira furor brevis eſt*, Anger is but a ſhort Madneſs: Fury and Malice being alike fatal and deſtructive to the Son's Life and Safety with Drunkenneſs and Madneſs; nor doth ſuch a Son reſiſt his Paternal Power, but only his brutiſh Force and Violence. So that if Sons (when grown to Years of diſcretion) have not a Right to defend their Lives, in the State of Nature, againſt all Perſons whatſoever, who go about to take it away without any juſt Cauſe; every Son ought to ſuffer his Father to kill him, whenever, being tranſported by Madneſs, Drunkenneſs, or ſudden Paſſion, he hath a Will ſo to do: Which how it can conſiſt with that great Law of Nature, of propagating and preſerving the Species of Mankind, if a Father ſhould have ſuch an unreaſonable unlimited Power, I'll leave to your ſelf or any other reaſonable Man to conſider. Nor doth it follow, that becauſe a Son can in no wiſe be ſuperior to his Father, he ought not therefore to reſiſt him; ſince tho' I grant Puniſhment is a Right of Superiors over their Inferiors, yet ſo is not Reſiſtance; ſince every one knows that Reſiſtance is exerciſed between Equals, as I have already proved Sons are to their Fathers, in all the Rights of Life and Self-

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preſervation; and conſequently to judge when their Lives and Eſtates are unjuſtly invaded.

M. I muſt confeſs I am in a great doubt which will moſt conduce to that great Law you mention (which I grant to be the Sum of all the Laws of Nature) *viz.* of preſerving or proſecuting the common Good of Mankind; that Fathers ſhould have an abſolute irreſiſtible Power over the Lives and Fortunes of their Children, let them uſe it how they will; or elſe that Children ſhould have a Right to reſiſt them, in ſome caſes, when they go about to take away either of them without any juſt Cauſe: For tho' I own, that (if the former Principle be true) Parents may be ſometimes tempted to take away their Children's Lives or Eſtates without any juſt Cauſe; ſo on the other ſide, if Children ſhall aſſume ſuch a Power to themſelves of judging when their Fathers do thus go about to invade either their Lives or Eſtates, it will (I doubt) lay a Foundation for horrid Confuſions and Diviſions in Families; ſince, if Children are under a conſtant Subjection to their Fathers, they ought then to be abſolutely ſubject to them in the State of Nature, and therefore ought never to be reſiſted: For if all Fathers, and Maſters of Families, are truſted by God with an abſolute Power of Life and Death over the Wife, Children, and Servants of the Family, as your ſelf cannot deny; then no Reſiſtance of this abſolute Power can ſubſiſt with the Peace and Tranquility of that Family, without the Diminution or total Deſtruction of that abſolute Power, with which they are entruſted.

And tho' I admit that Parents ought neither to uſe nor ſell their Children for Slaves, nor to take away either their Lives or Goods, without great and ſufficient Cauſe; yet of theſe Cauſes Fathers, in the State of Nature, muſt be the only and uncontroulable Judges: Since, if Children (whom I ſtill conſider as Subjects, tho' not as Slaves, in this State, as long as they continue Members of their Fathers Family) ſhould once have a Right to reſiſt, when they thought their Lives or Eſtates were unjuſtly invaded; they might alſo oftentimes, through Undutifulneſs or falſe Suggeſtions, pretend or ſuppoſe that their Fathers were mad, drunk, or in a Paſſion, and went about to take away their Lives, when really they intend no ſuch thing, but only to give them due Correction: Which would give Children an unnatural Power of reſiſting, or perhaps of killing their Fathers, upon falſe Surmiſes or ſlight Occaſions.

And as this would introduce great Miſchief and Confuſion in private Families, ſo would it likewiſe prove a Foundation of Rebellion againſt all Civil Powers whatſoever; if Subjects, who are the ſame thing in a Kingdom that Children are in a Family (in the State of Nature) ſhould take upon them to reſiſt their Prince whenever they think he goeth about to invade either their Lives or Fortunes, which would likewiſe ſerve to juſtify all the moſt horrid Rebellions in the World; ſince all Rebels whatſoever may or do pretend, that their Lives, Liberties and Fortunes are unjuſtly invaded, when indeed they are not; and likewiſe upon the leaſt Hardſhip or Injuſtice in this kind inflicted upon any private Subject, either by the Prince or his Miniſters (which Abuſes and Violences do often happen even under the beſt Governments) any ſuch private Perſon, who ſhall think himſelf thus injured, may upon this Principle take up Arms, and endeavour to right or defend himſelf againſt ſuch Violence; by which means, under pretence of ſecuring a few Men in their Lives or Eſtates, whole Kingdoms (if ſuch Perſons can find Followers enough) may be caſt into all the Miſchiefs and Confuſions of a Civil War, till the Prince and Government be quite deſtroyed.

F. I muſt confeſs, the Arguments you now bring are the beſt you have yet produced, ſince they are drawn from that great and certain Law of procuring the common Good and Peace of Mankind. But I hope I ſhall make it plain to you, that no ſuch terrible Conſequences will follow from the Principles I have already laid down; and therefore I muſt firſt take notice, that you have in your Anſwer confounded two Powers together, which ought to be diſtinguiſhed in the State of Nature, *viz.* the Power which Fathers, as Maſters or Heads of Families, may exerciſe over the Lives of their Children or Servants, whilſt they remain Members of their Family, and that Reverence and Duty which Children muſt always owe their Fathers as long as they live, even after they become Fathers or Maſters of Families of their own. In the firſt State, I have already allowed, that ſuch Fathers, as Maſters of Families, may lawfully exerciſe a far greater Power over their Children, whilſt they are Members of their Family, than they can when

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they are ſeparated from it, yet is not this Power in all Caſes abſolute or irreſiſtible, as I have already proved; and therefore I do in the firſt place reſtrain this Right of ſelf defence only to ſuch Caſes where a Father would take away a Son's Life in a fit of Drunkenneſs, Madneſs, or ſudden Paſſion, without any crime committed, or juſt cauſe given: Which I alſo limit to a bare ſelf defence, without injuring or taking away the Life of the Father if it can poſſibly be avoided; and in this Caſe, if the Son, who is like to ſuffer this violence, may not judge when his Life is really in danger to be deſtroyed, becauſe he may pretend ſo when really it is not. This is no juſt reaſon to overthrow ſo great a Right as ſelf preſervation; ſince if this were a ſufficient Objection, it would have the ſame force againſt all ſelf defence whatſoever: For it doth often happen that wicked and unreaſonable Men will pretend that they were forced to take away the Lives of others, only to preſerve their own, when indeed it was altogether falſe and needleſs, and they only killed them to ſatisfy their own Malice or Paſſion. And therefore, as there is no reaſon that the abuſe of this natural Right ſhould be uſed as an Argument againſt the uſe of all ſelf defence, by any Man whatſoever; ſo likewiſe neither ought the like abuſe thereof by ſome wicked Children to be brought as an Argument againſt its being made uſe of at all by others, who are never ſo unjuſtly aſſaulted, and in danger of their Lives from their Fathers violence. If the firſt Principle be true, (on which this is founded) that a Son may exerciſe this Right of ſelf defence in ſuch Caſes, without any intrenchment upon his Father's Paternal Authority, or that Filial duty and reſpect which he muſt always owe him whenever he returns to himſelf, and will behave himſelf towards him as becomes a Father, and not like an Enemy or Cut-throat.

And as for the Quarrels and Confuſions, which you alledge may happen in Families between Fathers and Children, in caſe ſuch a liberty ſhould be allowed, thoſe inconveniences will prove very inconſiderable, if you pleaſe to take Notice: That, firſt, I do not allow this Right of Reſiſtance to be exerciſed by any Children before they attain to years of diſcretion. Secondly, that after they have attained to theſe Years, no Reſiſtance ought to be made againſt a Father, whilſt they remain part of their Father's Family, but only in defence of their own, their Mothers, Wives, and Children's Lives; ſince I grant, that a Son as long as he continues a Member of his Father's Family, ought to beſtow all his own labour for his Father's profit, and cannot acquire any Property either in Lands or Goods without his Father's conſent: And ſince you conceive this Right of ſelf defence, if allowed to Children, would be the cauſe of ſo great miſchiefs in Families, if Children ſhould have any Right to judge when their Fathers abuſed their Power over them; let us a little conſider on which ſide this abuſe is moſt likely to happen; for if you pleaſe but to look into the World, and ſurvey the Nature of Fathers and Children, and ſet the faults of the one againſt the other, you will find, that (as I confeſs) it is the Nature of many Children to contradict and diſobey their Fathers Commands, and that moſt young People hate reſtraint, and love too much liberty, and may oftentimes think their Fathers too harſh or ſevere to them, when they really are not; yet doth ſuch falſe Surmiſes and diſobedient Actions ſeldom end, either in abſolute Reſiſtance, or taking away their Fathers Lives by force; or if they do ſo, it is really done for their own defence, or whilſt they are aſſaulted by them in their own Lives, or thoſe of their Children; but is commonly acted privately, to ſatisfy their own revenge or malice, which I hold to be utterly unlawful: So likewiſe let us conſider on the other ſide, thoſe temptations that Fathers lie under of injuring their Children, or taking away their Lives, or uſing them like Slaves, without any juſt Cauſe; you'll find that they, by reaſon of their Age, natural Temper or Infirmities, may be eaſily tranſported to that degree of Paſſion, that not conſidering the Follies of Youth, they may oftentimes, in their Paſſion, either beat them ſo cruelly, as utterly to diſable or maim them, or elſe take away their Lives for little or no Cauſe. And beſides, Fathers being often covetous and ill natured, (which are the Vices of old Age) may (where there is no Power over them to reſtrain them from it) either keep them as Slaves themſelves, or elſe ſell them to others for that purpoſe, (as I have already given you an Example of the Negroes in *Africa*) and which of theſe two inconveniences are moſt likely to happen between Children and Parents in the State of Nature, I ſhould leave to any indifferent Man to judge between us.

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us. And therefore I think, it more conduces to the good and peace of Families, and consequently the happiness and preservation of Mankind, (which are the end of all Laws) that Children should be allowed these Rights (I have already laid down) of asserting their natural Liberty from Slavery; and defending their Lives, and those of their Wives and Children, from the unjust Violence of their Fathers, than that they should be left wholly at their Disposal to be maimed, killed or ruined, whenever their Covetousness, Passion or Malice may prompt them to it: Since if all Fathers were satisfied that their Children have a Right thus to defend themselves in these Cases against their unjust Violence, it would be a means to make them act more cautiously, and to behave themselves with greater Tenderness and Moderation towards them.

So that to conclude: I utterly deny that these Principles, I have here laid down, do at all tend to countenance Rebellion, or raising Disturbances in Civil Governments; since I cannot allow you have proved Parents to be Princes or Monarchs in the State of Nature, or that Families, and Kingdoms or Commonwealths are all one: Or if I should grant them to be so, yet would it not therefore follow, that every private Subject in a Civil State hath the same Right to defend his Life, or that of his Wife and Children, against the Violence or Injustice of the Supream Powers, as a Son may have in the State of Nature to defend his Life, &c. against his Father's Rage or Violence; since I grant no particular Subject, on his own private Account, can contradict or resist the Supream Power of the lawful Magistrate (however unjustly exercised) by Force, without disturbing, or at least endangering the Quiet and Happiness of the whole Community, and perhaps the Dissolution of the Government itself, which is against the Duty, not only of a good Subject, but also of an honest moral Man, who will not disturb the publick Tranquility for his own private security or revenge. But in private Families the Case is otherwise, and Children may resist their Father in the Cases already put, without introducing either Anarchy or Civil War in the Family; since it can scarce be presumed, that either their Mother, Brothers or Sisters, will take part with a Son or Brother, against their Husband and Father, unless it were that they might thereby hinder him from committing Murder, by defending their Son or Brother's Life, when thus violently and without cause assaulted; and if it should sometimes happen otherwise, yet this would be a much less mischief, than that, out of this fear, the Lives and Liberties of an innocent Wife and Children should suffer, without cause, by his Drunkenness or Passion.

But as for the Resistance which Sons may make in the State of Nature, and when separated from their Father's Families, it is of a much larger extent, since they may then not only defend their own Lives, but also those of their Wives, Children, and their Estates, against their Father's unjust violence. Though I do here likewise restrain this self defence only to cases of actual Invasion or Assault of such Fathers upon the Lives and Estates of their Children, in which Cases, I also absolutely condemn all Actions and Proceedings, done by way of prevention, before such violence or assault is actually begun to be made upon them; much less do I allow of any revenge or return of Evil for Evil by such Children, when the danger is over; since however such revenge may be lawful between Persons in the State of Nature, no ways related or obliged to each other; yet do I by no means allow the same privilege to Children against their Parents, since I look upon the Obligation they have to them, to be of so high a Nature, that it can never totally be cancelled, tho' in those Cases of self preservation and defence they may be suspended for a time. As if I owed my Life, and all that I have to some great Person, who hath either saved the one, or bestowed the other upon me, though I should be very undutiful and ungrateful too, if upon his becoming my Enemy, though without any just cause, I should go about to return his injuries in the same kind; yet were I not therefore obliged to give up that Life and Estate he had before bestowed upon me, whenever he thought fit, without any just occasion to take them away; and I am confident that Resistance in these Cases, and with these Restrictions, doth neither derogate from that Gratitude and Piety, which Children always ought to pay their Fathers, nor yet can tend to encourage either Anarchy or Rebellion; since such Sons, when once married, and are become Masters or Heads of Families themselves, then cease to be under their Fathers Subjection as they were before, though I confess they are

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always to honour and reverence him according to God's command in all Cases, when they will deal with them as Fathers, and not as Enemies.

M. I shall no longer dispute this Right of Resistance in Children in the Cases you have put, since I see it is to little purpose to argue longer with you about it; but this much I think is still true, that all Supream Powers whatever cannot without Rebellion and absolute Dissolution of the Government be resisted by the Subject; so that if the Government of Fathers or Heads of Families be Supream, as you seem to grant, that cannot be resisted neither, without bringing all things therein to Anarchy and Confusion.

F. Pray give me leave, Sir, to interrupt you a little; I desire you to remember that I do not allow the Power of Fathers or Masters of Families to be any more then Oeconomical, and not Civil Power; and I have already shewed you, how Resistance of such a Power, when violently and unjustly exercised, may be resisted without any Anarchy or Confusion in the Family: But as for Resistance of Civil Powers in some Cases, it is not the Subject of this Discourse; and therefore I desire you would now mind the Subject in hand, and not pass off to any other, till we have dispatch'd this, so that I would rather, if you any fresh Objections to make, that you would now do it, because it groweth late.

M. I must confess ingenuously, your Arguments have much staggered me, since I see great inconveniences may happen on either side. For if the Father or Master may be the sole Judge, when and how he may exercise this absolute Power, I grant all those Mischiefs may sometimes fall out, which you have here set forth: So on the other side, if the Children may be Judges in their own Case, those Evils may often happen, which I have already alledged. And therefore pray pardon me, if I am not too hasty in altering my Opinion in this Point, without better consideration. But methinks you have not yet fully answered one of my main Arguments, to prove the Power of Life and Death to proceed from God alone, and therefore must have been conferred at first on *Adam*, since no Man hath a Power over his own Life, (as I said before) and therefore cannot have it over that of others.

F. I thought I had already as good as answered this doughty Objection, when I had yielded to you, that neither private Men, nor Masters of Families, have any Right to defend their own Lives, much less to take away those of others; but as it is granted them by God in the Law of Nature, in order to the procuring the great end of it, *viz. the happiness and propagation of Mankind*, which I own could not, in this lapsed and depraved State of Nature we now are in, long subsist without such a Power. Yet I think I have already sufficiently proved, that we have no need to recur to I know not what Divine Charter granted by God to *Adam* or *Noah*, and from them derived to all Civil Magistrates, that ever have been or shall be in the World, the Consequence of which would be, that no Sentence of Death could be justly given against any Man, but in such Kingdoms or Commonwealths, who own this Authority as conferred on them by God in *Adam* or *Noah*, from which they must derive their Title to it. Now I desire you would shew me how many Kingdoms or Commonwealths there are in the World, who ever heard of, much less owned this Divine Charter, this fine Notion, yea scarce reaching farther than some few Divines and high Royalists of our own Island.

But be it as it will, the Antecedent or first Proposition is not true, that no Man in any case whatsoever hath Power over his own Life, and therefore neither is your Consequence; for I suppose, that for the same end for which the Civil Powers may take away another Man's Life, *viz.* in order to the greater good of Mankind, (of which my Religion or Country is a part) I am likewise Master of my own, and may lay it down or expose it, when I think it can conduce to a greater good than my single Life can amount to. And therefore, the Example of *Codrus* the *Athenian* King is highly celebrated by all ancient Authors, and is not condemned by any Christian Writer that I know of, for exposing himself to certain Death to gain his Citizens the Victory, the loss of which would have been the ruin of that State. And in the first Book of *Maccabees*, Chap. 6. 43. (which though it be not Canonical Scripture, yet is allowed to be read in our Churches, as containing Examples of good Manners) you may read that *Eleazer*, the younger Brother of *Judas Maccabeus*, is there highly commended for his Valour in killing the Elephant, on which the supposed King

Antiochus

Antiochus was mounted, that he might thereby deſtroy him likewiſe, though he might be aſſured of his own Death, by the Elephants falling upon him: And the Zeal for the Chriſtian Religion amongſt the Primitive Chriſtians was ſo great, that we may read in *Tertullian*, and divers Eccleſiaſtical Hiſtorians, of whole Troops of Martyrs, who, though unaccuſed, yet offered up their Lives at the Heathen Tribunals to a voluntary Martyrdom. And farther, *Euſebius* himſelf doth not condemn, but rather commends ſome Primitive Chriſtians, that being like to be taken by their Heathen Perſecutors, caſt themſelves down headlong from the top of their Houſes, *eſteeming* (as he there tells us) *a certain Death as an advantage, becauſe they thereby avoided the cruelty and malice of their Perſecutors.* I could likewiſe give you (if it were not too tedious) ſeveral other Examples of Ancient Martyrs, who have given up themſelves to certain Death, to ſave the Lives of ſome of their Friends, or elſe of Chriſtian Biſhops, whom they lookt upon as more uſeful to the Church than themſelves, and which St. *Paul* himſelf does likewiſe ſuppoſe to be Lawful, when he tells the *Romans*, *That though ſcarcely for a righteous Man would one die; yet peradventure for a good Man ſome would even dare to die*, that is, a Man highly beneficial to others. And the ſame Apoſtle, in the laſt Chapter of this Epiſtle, returns thanks to *Priſcilla* and *Aquila*, not only on his own behalf, but alſo for all the Churches of the Gentiles, *becauſe they had for his Life laid down their own Necks*; that is, hazarded their Lives to ſave his, and where ever they might have thus expoſed them, ſurely they might have loſt them too. And therefore I think, I may with reaſon affirm, that in moſt Caſes, where a Prince or Commonwealth may command a Man to expoſe his Life to certain Deſtruction for the publick good of his Religion or Country, he hath Power likewiſe to do it of his own accord, without any ſuch command, the Obligation proceeding not only from the Orders of his Superior, but from that Zeal and Affection, which by the Laws of God and Nature he ought to have for his Religion and Country, even beyond the preſervation of his own Life.

Euſeb. l. 8. cap. 12.

Rom. 5. v. 7.

M. Well, I confeſs, that this that you have now ſaid, carries ſome colour of reaſon with it, and is more than I had conſidered before. But pray reſolve me one difficulty more, which ſtill lies upon my Mind. By what Authority, leſs than a Divine Commiſſion from God himſelf revealed in Scripture, do Supream Powers take upon them to make Laws? And that under no leſs Penalty than Death itſelf, againſt ſuch Offences, as by the Laws of Nature do no ways deſerve Death, ſuch as Theft, Counterfeiting the publick Coin, with divers other Offences, needleſs here to be reckoned up. And if a Father (as you will not allow him) hath no Right over the Lives or Perſons of his Wife and Children, I cannot ſee how a Maſter of a ſeparate Family can have any ſuch Power, more than his Wife, or any other of the Family; and the Scripture ſeems to countenance this Power of puniſhing for Murder, to be in any that will take it upon them; and therefore you ſee *Cain* ſaid, *whoever meets me, will ſlay me.* And God tells *Noah*, *whoever ſheddeth Man's Blood, by Man ſhall his Blood be ſhed*, without reſtraining it to any Man particularly who is to do it.

F. This Objection is eaſily anſwered, if you pleaſe to conſider, what you yourſelf did a good while ſince urge to me, that God endowed *Adam* with ſo much Authority, as ſhould enable him to govern his own Family and Children as long as he lived; which I readily granted you, and I only differed in the manner of its derivation, you affirming it to proceed from a Divine Charter or Grant by Revelation conferred upon him by God; and I maintaining, that both he, and every other Maſter of a ſeparate Family, derive it only from God's natural, and not revealed Law, which if it be well proved, ſuch Maſters of Families, as alſo all Civil Powers (whom I ſuppoſe to be endued with the Power of all ſuch Maſters of Families or Freemen taken together) may for the ſame end, (*viz.*) the good Government and Peace of their Families and Commonwealths, make Laws under no leſs a Penalty than Death it ſelf, againſt ſuch Offences as by the Law of Nature do not deſerve it; ſince without ſuch a Power (the wickedneſs of Man being come to this height it is) no Family or Commonwealth could be long preſerved in Peace or Safety. And therefore, I ſuppoſe you will not affirm, but that ſuch a Maſter of a Family may very well inflict any Puniſhment leſs than Death for ſuch Offences, which if they find too gentle to amend thoſe Crimes, they may likewiſe for the ſame reaſon increaſe the Puniſhments ordained for it. And therefore I yield, that tho' Theft doth not in its

own Nature deſerve Death, yet if the Maſter of ſuch a ſeparate Family ſhall find his Children or Servants to be ſo addicted to this Vice, as not to be amended by any leſs Puniſhments than Death, he may, for the quiet of his Family, make a general Law, that whoſoever for the future ſhall commit Theft, ſhall ſuffer Death; and I doubt not but ſuch a Law, when promulged, may be lawfully executed; ſince this Maſter of a Family is intruſted by God with the ſole Power of judging, not only what are Crimes, but alſo what are fit Puniſhments for them, ſince both are alike neceſſary for the happineſs and preſervation of the Family. And I ſo far agree with you, that ſuch Maſters of Families *have as much Power over the Lives of their Children and Servants, as the moſt abſolute Monarchs have over their Subjects*, that is, for their common good, and no farther. And upon the ſame Principles do all Kings and Commonwealths inflict capital Puniſhments for the Tranſgreſſion of all ſuch Laws, as do any way entrench upon the common Intereſt and Safety of their People; and upon this ground, they may juſtly inflict no leſs Puniſhments than Death, for Coining of falſe Money, which is but a ſort of Theft from the publick Treaſure of the Commonwealth. And the ſame may be ſaid for all capital Puniſhments ordained againſt other Offences of the ſame Nature.

M. If Fathers or Maſters of Families are endued by God, (as you your ſelf now own) not only with this Power of Life and Death, for enormous Crimes againſt the Laws of Nature, but alſo to make new Laws, or ordain what Puniſhments they pleaſe for ſuch Offences, as they ſhall judge deſtructive to the quiet and happineſs of their Families, I ſee no difference (notwithſtanding what you have hitherto ſaid to the contrary) between Oeconomical and Civil Power. For if we compare the natural Rights of a Father or Maſter with thoſe of a King or Monarch, we ſhall find them all one without any difference at all, but only in the latitude or extent of them. For as the Father or Maſter over one Family in the State of Nature; ſo a King, as a Father or Maſter over many Families, extends his care to preſerve, feed, cloath, inſtruct, and defend the whole Commonwealth; his War, his Peace, his Courts of Juſtice, and all his Acts of Sovereignty, tend only to preſerve and diſtribute to every Subordinate, and Inferior Father and his Children, their Rights and Privileges. Hath a Monarch Power to make new Laws, and appoint what Puniſhments he will to enforce their Obſervation? So alſo hath a Father of a Family. Hath an abſolute Prince Power to command or diſpoſe of the Goods and Eſtates of his Subjects, for their common Quiet and Security? So alſo hath a Father or Maſter of a Family. So that all the Duties of a King are ſummed up in this univerſal Fatherly care of his People; and if the Sovereignty be the ſame, I cannot ſee any Reaſon, why the Rights and Prerogatives of it ſhould not be ſo too. And therefore, if Nonreſiſtance againſt their Authority be an unſeparable Prerogative of Sovereign Power; then if a Father or Maſter of a Family be endued with it, he ought no more to be reſiſted, than the moſt abſolute Monarch. *F. P. c. 1. Sect. 10.*

F. I perceive your Head is very full of this Notion of the Identity of Natural and Civil Power, or elſe you would never inſiſt ſo long upon it as you do, after what I have proved to the contrary. And therefore, ſince I ſee you look upon this as your topping Argument; I ſhall do my endeavour to ſhew you more plainly the difference between them. For though I grant, that ſuch Fathers or Maſters of Families, (as we here treat of) are endued by God with divers Powers, which are analogous, or perhaps the ſame with thoſe of a King or Monarch, that is, of defending their Families, as far as they are able, from Foreign force, and Domeſtick injuries, and of revenging and puniſhing all Offences that may prove prejudicial or deſtructive to the peace and happineſs of their Families; yet doth it not therefore follow, that the Government of private Families and Kingdoms are all one, ſince they differ very much, not only in their Inſtitution, but alſo in their End. For firſt, the Fatherly Power by the Law of Nature is ordained only for the Generation and Education of the Children, till they come to be grown up; and his Authority, as a Father, is ordained by God only for thoſe ends; and therefore this Relation of a Father is ſo inherent in him, that it can never be parted with, or aſſigned over to any other, ſo as to make the Child or Son ſo aſſigned, to owe the ſame duty to him, as he did to his Father.

There

There is alſo, beſides the Power of a Father, that of a Maſter or Head of a Family over his Children and Servants, whilſt they continue Members or Subjects of it, which Power I grant may be aſſigned, or made over to one, or more Perſons, whenever ſuch Maſter ſhall think fit to inſtitute a Kingdom or Commonwealth: Yet, as Dr. *Sanderſon* very well obſerves, this Power of a Maſter differs very much from that of the Civil Powers of a Kingdom or Commonwealth, as well in the Object, as End of this Power. For *firſt*, the Power of a Father is only over one ſingle Family; whereas that of a Commonwealth is over divers Families, united under one Civil Head. *Secondly*, In reſpect of the End, the Power of the Maſter is chiefly ordained for his own Intereſt and advantage; but that of the Civil Power chiefly reſpects the good of the whole People or Community. *Laſtly*, the Power of the Maſter of the Family is only for the maintaining his own natural Property in thoſe things which he hath acquired in the State of Nature; whereas one great End of Civil Government, is to introduce and eſtabliſh Civil Property in things, according to the Laws of the Commonwealth, and alſo to maintain it when ſo conſtituted. To conclude, Fathers beget their Children, and Maſters acquire to themſelves Slaves and Servants, but it is *from the conſent of ſeveral Fathers or Maſters of ſeparate Families, that any ſort of Civil Government commenced at firſt; ſo that the People at firſt made Kings, and not Kings the People:* And further, it is the duty of Fathers and Maſters to provide for their Children and Servants, but the People ought to provide for their Kings, not only for their Neceſſities, but for their Magnificence and Grandeur; ſo that the Power of Fathers and Maſters is Natural, whereas that of Kings and Republicks is Political and Artificial, as proceeding from Compacts or the Conſents of divers Heads of Families or other Free-men. And as Kingdoms and Families differ in the manner of their Inſtitution, ſo do they likewiſe in their Ends, which is of a far larger extent in the latter, than in the former; the main deſign of inſtituting Kingdoms and Commonwealths, being not only to defend their Subjects from ſuch injuries or violence that they may do each other; but chiefly, by their united Forces, to guard them from the violence and invaſion of Foreign Enemies.

For though I grant, it may ſometimes happen, that a Family may conſiſt of ſo great a number of Children, Servants or Slaves, as may make a little Army, ſuch as *Abraham's* was, when he made War againſt the four Kings; yet is this purely accidental, and not at all eſſential to the being of a Family, which is as perfect in all its conſtituted parts, if it conſiſts of three or four Perſons, as of three or four hundred. Whereas a Kingdom or Commonwealth cannot ſubſiſt, unleſs it can either by its own Power, or united Forces, defend its Members from Foreign force and invaſions: So alſo in private Families, in the State of Nature, there can be no Property acquired in Lands or Goods by any Member of it, without the Maſter's expreſs will or permiſſion. But in all Civil Governments, the very inſtitution and preſervation of Civil Property was one of its chiefeſt Ends, which may eaſily be proved by experience: Since in all Nations, where there is any Property either in Lands or Goods, there is a neceſſity of ſome Civil Government to maintain it. Whereas in divers parts of *Africa* and *America*, where there is no diſtinct Property in Land, and where there are no other Riches, than every Man's ſmall Cottage and Garden, with their Hunting and Fiſhing Inſtruments, there is no need of any Common or Civil Power over them, higher than that of Maſters or Fathers of Families, who own no Superiority among themſelves, unleſs it be when they go to War, and then they chuſe out of their own Numbers, for their Captains or Leaders, thoſe whom they know to be ſtouteſt and moſt experienced, whoſe Power determines as ſoon as the War ceaſes.

But to make an end of this long Diſcourſe, ſuppoſe I ſhould grant all you can deſire, that Oeconomical and Civil Government do not differ in kind, but in largeneſs or extent; yet will it not follow, that therefore it muſt be in all Caſes irreſiſtible, ſince I think I am able to prove, that no Power whatever (except that of God himſelf) can be endued with this Prerogative, if once it goes about to fruſtrate, and deſtroy all the main Ends of Government, (*viz.*) the happineſs and ſafety of the Subjects, either by downright deſtroying of them, or elſe by reducing them to a condition of Slavery and Miſery. But to let you ſee, I would deal fairly with you, I will diſcourſe this Point of *Adam's* Sovereignty

reignty no farther, but will at preſent take it as the Lawyers ſay, *de bene eſſe*, or for granted; and I deſire you would ſhew me in the next place, when *Adam* died, by what Law, either Divine or Natural, *Cain* or *Seth* (chuſe which you will) could command over all the reſt of his Brethren, and their Deſcendants. And then again, if you could do this, what benefit this Doctrine would yield to all Princes and States at this day, or how you intend to deduce a Title for them, from *Adam* or *Noah*, or any of their Sons, to their reſpective Kingdoms, and conſequently to an abſolute Subjection of their Subjects, without which all your Hypotheſis will ſignify nothing.

M. I muſt return you thanks, Sir, for your candid dealing, and for the great pains you have taken to enlighten my Underſtanding in this important Queſtion. And though I doubt, you have laid down Principles not ſo ſuitable to God's Will revealed in the Holy Scripture, yet I will not impute it to any want of ſincerity in yourſelf, who, I hope, are ſatisfied of the Truth of what you have maintained; ſo on the other ſide, I deſire you not to take it ill, if I cannot leave my own Opinion, which I have always hitherto lookt upon, as moſt ſuitable to the Doctrine of the Church of *England*, to the Practice of the Primitive Church, and to the Laws of the Land, and muſt continue therein, till I am convinced I am in an Error. But ſince I deſire to have a further Converſation with you upon this important Subject, pray let me know when we ſhall meet again, that I may prove to you from the Holy Scripture, as well as thoſe Authors I have peruſed, that there is *a Divine Right of Blood inſtituted by God for the Succeſſion of Kingdoms*, which cannot without a kind of Sacrilege, or the higheſt Injuſtice, be taken away from the Right Heir.

F. I kindly accept your proffer, and, if you pleaſe, ſhall diſcourſe this important Queſtion with you to Morrow in the Evening, if your Occaſions will give you leave.

M. I expect you between ſeven and eight, and in the mean time am your Servant.

Bibliotheca Politica.

DIALOGUE II.

Whether there can be made out from the Natural, or Revealed Law of God, any Succeſſion to Crowns by Divine Right?

M. YOU are, I ſee, Sir, a punctual Man to your Hour: Pray do me the favour to ſit down by the Fire, I will but make an end of what I am writing, and wait on you preſently.

F. Your Servant, Sir, take your own time; but pray remember the point you are now to ſatisfie me in.

M. Now, Sir, I have done; and if I remember right, I am to derive a Title to all the Kings and Monarchs that have ever been, or ſhall be in the World, from that ſupream fatherly Power conferred by God on *Adam*. As for Commonwealths, which I muſt own to be of meer Humane Invention; tho' I will not ſay that they are abſolutely unlawful, yet I think they are not the Powers ordained by God in Scripture.

F. Well, Sir, we will diſcourſe farther of that anon; and therefore I do aſſure you, I do not deſire any more of you now than that you ſhould prove the Divine Inſtitution of Monarchy, and I think that task ſufficient if it can be made out in one or two Meetings.

M. It may ſeem indeed ſomewhat abſurd to maintain, that all Kings are now
F. P. Ch. 1. § 8. the Fathers of their People, ſince you'll ſay Experience ſhews the contrary. It is true all Kings are not now the natural Parents of their Subjects, yet they all either are, or are to be reputed the next Heirs to thoſe Primogenitors, who were at the firſt the natural Parents of the whole People, and do in their Right ſucceed to the Exerciſe of the Supream Juriſdiction; and ſuch Heirs are not only Lords of their own Children, but alſo of their Brethren, and all others that were ſubject to their Fathers: and therefore, I ſuppoſe, that God, when he conferred this Supream Power on *Adam*, did not intend it ſhould die with him, but deſcend to his Heirs after his deceaſe.

F. Well, I ſhall at preſent grant you all this likewiſe, though it might be
Ibid. queſtioned. But pray, who were thoſe Heirs? many, or but one Perſon?

M. I ſuppoſe you will alſo grant me at preſent, what we before diſputed, that the Power of Fathers over their Children, being the Fountain of all Regal Authority, by the Ordination of God himſelf, it follows that Civil Power not only in general is by Divine Inſtitution, but even the Aſſignment of it ſpecifically to the eldeſt Parents.

F. Pray whom do you mean by eldeſt Parents? our great Grand-mother *Eve*? For if you mean by it one that firſt had had Children, ſhe muſt come in as next Heir to *Adam* by theſe Words.

M. No, Sir, you altogether miſapprehend me, I mean the eldeſt Son of *Adam*; *Eve* was his Wife, and could have nothing to do to inherit in an Hereditary Monarchy as this was.

F. I beg

F. I beg your pardon, Sir, if I misunderstood you, but you must thank the Looseness or Impropriety of your Expression for it; for, I suppose, you cannot deny, but eldest Parents commonly signifie either the eldest Men, or Women that have Children, or those who have longest had Issue; and then in either of these Senses, our great Grand-mother *Eve* stood fairest to be Heir of this Divine Power of *Adam*: But this I am sure of, Parents can never signifie Heirs Male or Female, much less a Child who may sometimes (according to your Hypothesis) happen to be Heir. But since I am gotten into this Mistake, I shall not leave my hold, but shall make bold a little to argue our great Grand-mother's Title; for indeed I cannot see any reason why her eldest Son (for Example) should have any right to govern his Mother, and all his Brothers and Sisters, whilst she was alive.

For first, if your Argument from Generation must be good, that every Man that is born, becomes a Subject to him that begets him, this Argument will serve for *Eve* as well as *Adam*; since (as I have already proved) the Mother hath as great (if not a greater) share in the Generation of the Children, than the Father; Or secondly, if you insist upon the Divine Grant, you so much talked of last time, of *Adam*'s Dominion over the Creatures, in which his Children were included; I then proved to you, that this Grant was made as well to *Eve* as *Adam*; and consequently, that either she must have thereby an equal right with him, or at least after his Decease, to this Dominion, as a Husband and Wife, when joint Purchasers have to an Estate at Common Law. And lastly, if the Commandment of, *Honour thy Father and thy Mother*, were then in force by the Law of Nature, or by express Command from God, and that by *Honouring*, obeying must be meant (as most Commentators agree) then it will follow, that after *Adam*'s Decease, all *Eve*'s Sons and Descendants, though never so remote, were to have obeyed, or been subject to her, and not to her eldest Son, unless you can shew me that the Salique Law, against the Succession of Women, was made by *Adam* the first Monarch, which, I suppose, you will not undertake to prove.

M. I must confess I did not consider this Difficulty; for indeed it might never have happened, since *Eve* might have died before *Adam*; or if she did outlive him (which is uncertain) yet she was then very old, and consequently (besides the natural weakness of her Sex) uncapable or unfit for Government, and so might very well leave it to *Seth*; since *Cain*, the eldest, had by the Murder of his Brother, and his flying away into another Country, forfeited his Birth-right, and made himself uncapable of the Succession.

F. So then here is a Forfeiture, and an Abdication of this Divine Right of Succession in the very first Descent; whereas indeed I supposed, that this Divine Right had been at least as unforfeitable as the Crown of *England*; the very Descent of which, as our Lawyers tell us, purges all Defects in the next Heir, though he had murdered his Father and elder Brother too. But I only shew you the Absurdity of this Notion, and shall not longer insist upon it; therefore pray proceed.

M. I can't tell what might have been said, if *Cain* had come to claim his Birth-right: But this is certain, that he neither did, or could come to do it, since God condemned him to live in a strange Country far from his Brethren; and we read, *That Cain went out from the presence of the Lord, and dwelt in the Land of Nod, on the East of Eden; and he built a City, and called the Name of it Enoch, after the Name of his Son Enoch.* And there are four Descents set down immediately of his Family, which could be no other than the Princes of that City of *Cain*'s Race. So that you see, even in *Cain*'s Line, the Principality descended to the eldest Son.

E. P. P. c. 2. Sect. 9. Gen. 4. 16, 17.

F. I confess *Cain*'s Children and Grand-children are particularly set down in Scripture; but that they were Princes or Monarchs over their Posterity, or which way this City was governed after *Cain*'s Death, whether by one, or by all the Sons of *Cain*, is no where mentioned: But I see some Men can find even absolute Monarchy in a Text, where the Scripture mentions no such thing; and no wonder, for the *Alchymists* have found out likewise the Invention of their Elixir, or Philosophers Stone, in such Texts as you and I can see no such thing. But to be more serious:

That a Father ſhould be Lord over his Children and Poſterity, I confeſs there may be ſome colour of Reaſon, though none cogent enough to make it out: But that an elder Brother hath any Natural or Divine Right to be Lord over all the reſt of his Brethren, I can find no ground for in Reaſon, even upon your own Principles; for if every Man by his Birth becomes the Subject of him that begets him, it will neceſſarily follow, that a Man by his Birth cannot become a Subject to his Brother, who (ſure) did not beget him.

Therefore, I ſuppoſe, you will ſtill inſiſt upon that place in the fourth of *Geneſis*, which you cited at our laſt Meeting, when God told *Cain*, ſpeaking (as you ſuppoſe) of his Brother *Abel*, *His deſire ſhall be ſubject unto thee, and thou ſhalt rule over him.* From which Words I then told you, I thought an abſolute Subjection of *Abel*, and of all younger Brothers whatſoever, could not reaſonably be inferred: For you may remember I ſhewed you, that this Promiſe by God to *Cain*, concerning *Abel*, might be only perſonal, and relate to *Abel* only, and not to the reſt of his Brethren, much leſs all other younger Brothers, that ſhould be in the World. And in the next Place, this Ruling might only have been by Advice and Perſuaſion, and not by any Authority or Right of commanding him. So that if this be the Place (as I ſuppoſe it is) from whence you would deduce your Divine Right of elder Brothers being Monarchs over the younger in all Hereditary Monarchies, I muſt freely tell you, I think it a very bold Undertaking to found a Divine Right upon ſuch doubtful Expreſſions, as theſe of God to *Cain*.

M. I confeſs, I was now about again to urge this Place to you; for as I was not then well ſatisfied with your Explanation of it, which you now again repeat, ſo upon ſecond Thoughts I am much more unſatisfied with your Paraphraſe upon them. For you ſeem to me plainly to pervert the Senſe of the Words, and make them ſignifie juſt nothing. For ſure when God ſpake the ſame Words to *Eve* concerning *Adam*, as he did to *Cain* concerning *Abel*, can you conceive they were meant perſonally to *Eve* only, and concerned no other Wife that ſhould be after her? Or can you aſſign any Reaſon why theſe Words ſhould be rather meant perſonally in the laſt, and not in the firſt caſe? unleſs you will do it out of pure love to Anarchy and Confuſion. And if you ſay theſe Words do not ſignifie any deſpotick Power, but a ruling or governing by fair means or Perſuaſion, this ſeemeth meer trifling with God's Word, who ſays expreſly, *Thy Brother's deſire ſhall be ſubject to thee*, that is, (ſay you) as far as he thinks fit; *and thou ſhalt rule over him*, that is, if thou haſt the knack to wheedle or perſuade him. Would not this have been a mighty Matter for God Almighty to have appeared to *Cain* about, and an excellent Argument to comfort him, and to appeaſe his Wrath againſt his Brother? So that it ſeems apparent, by this Law given by God to *Cain* and *Abel*, that this Regal and Paternal Authority was not to die with him, nor to be equally divided amongſt all his Children at his Death; or that from thenceforth no Man ſhould have a Right, by Birth, of commanding another; for this Command to *Abel* could not be ſuppoſed to take Place in the Life of *Adam*, for then *Adam* was Lord over all his Children, and ſo none of them without his Permiſſion could rule over the reſt; and if it were otherwiſe by *Adam*'s Appointment, then *Adam* was the Sovereign ſtill, and the Son or Grandſon, ſo exerciſing this Power, was but his Deputy: But after *Adam*'s Deceaſe, then it became a real Sovereignty in his eldeſt Son, as having none but God ſuperiour to it.

B. P. P. §. 64.

Ibid. c. 2. § 7.

F. I hope you will judge more charitably of me, than to believe that the Senſe that I have put upon theſe Words, though different from yours, is out of any love of Anarchy or Confuſion, much leſs out of any deſign to pervert or wreſt this place of Scripture: And if I ſhould be ſo ſevere as you are, perhaps I might with more reaſon lay this Charge at your Door. For, in the firſt place, I am not ſatisfied with your Argument, that theſe Words could not be meant perſonally, or concerning *Abel* only; becauſe the ſame Words, when ſpoken of *Eve*, do likewiſe concern her Poſterity; and therefore, when ſpoken concerning *Abel*, they muſt likewiſe relate to all younger Brothers in Hereditary Monarchies; which conſequence I may with very good reaſon deny, for whatſoever Subjection may be due, by vertue of the like Words, from *Eve* and her Poſterity, to *Adam* and all other Husbands, is to be ſuppoſed to have been enjoined, becauſe all Women are deſcended from *Eve*, and ſo were repreſented by her as their firſt

Parent.

Parent. Thus St. *Paul* ſuppoſes all Men to be in a State of Sin and Death, as repreſented by *Adam, their Anceſtor, by whoſe Diſobedience all have ſinned.* But no Man will affirm, that all the elder Brothers or Monarchs in the World were repreſented by *Cain*, and all younger Brothers by *Abel*; no Man at this day being (as appears in Scripture) deſcended from either of them: And I cannot but take notice, that the better to ſtrengthen your Notion, you again ſoiſt in out of the Margin of our *Engliſh* Bible, *His Deſire ſhall be* ſubject *to thee*; whereas in the *Hebrew* it is no more than, *His*, or *its Deſire ſhall be to thee.* Rom. 5. 12.

And that the Words *rule over* are to be interpreted according to the Subject, and do not always mean a *ruling by force*, or *command*, appears by the ſame *Hebrew* Words made uſe of in the firſt of *Geneſis*, concerning the *two great Lights that God ſet in the Firmament, to give Light upon the Earth, to rule over the Day and over the Night*; which cannot ſignify a ruling by force or command, but only by a natural influence or preheminence of the Sun and Moon above the Stars or Planets. And tho' you are pleaſed to ridicule this Explanation of mine, yet I think I may with as much reaſon treat yours with the like Contempt. For ſince your ſelf grant, that this *Power* of *Cain* over *Abel* was not to commence till after the Death of *Adam*, and that this Murder of *Abel* was committed above a hundred Years after *Adam*'s Creation, appears by the time of the Birth of *Seth* (who was born ſome time after *Abel*'s Death) would not this thing have been a mighty Comfort to *Cain*, when he was in his dogged Humour, if God had bid him chear up; for the time ſhould come, that, if he behaved himſelf well, about eight hundred Years hence, when his Father *Adam* ſhould die, he ſhould then lord it over his Brother, and be revenged of him for the Affront he had received in having his Sacrifice preferred before his own? So that this Interpretation of yours is ſo abſurd, that I do much rather agree with divers learned Commentators, as well *Jews* as Chriſtians, who make not only a quite different Interpretation, but alſo a different Verſion of theſe Words from the *Hebrew* Text: And if you have the Learned Jeſuit *Menochius*'s Notes upon the Bible, I pray let me ſee them. Here pray obſerve what he ſays upon this place: *Sed ſub te erit appetitus ejus. In Hebræo & apud* LXX *eſt, Ad te converſio ejus. Senſus eſt: Peccatum ejuſque appetitus & concupiſcentia te ſollicitabit ad conſenſum; ſed ita, ut ad te converti, & a te conſenſum petere & impetrare debeat. Id noſter interpres ad ſenſum clare vertit, Sub te erit appetitus ejus.* By all which he means no more, than that Sin ſhould tempt or ſollicit him to offend, but that he ſhould rule over it, that is, had a Power ſo to do, if he would uſe it as he ought. So likewiſe Mr. *Ainſworth* upon this Place (as you may ſee in *Pool*'s Criticks) puts a like Senſe upon the following Words, referring the whole Sentence to the Sin, in theſe Words: *Peccatum ponitur pro pœna peccati; juxta Hebræos ita accipitur*, Gen. 19. 15. Lev. 20. 2. 1 Reg. 7. 9. *Senſus eſt: Prope te punitio peccati, & ad te deſiderium ejus*; i. e. *cupit te pœna peccati tui, ut ſolet poſt peccatum admiſſum; ſed tu, ſi vis, dominaberis illi*, i. e. *potes declinare peccatum.* Q. d. *Pœna hæc ſicut canis eſt, qui ad oſtium cubat, cupiens ingredi; ſed in poteſtate Domini eſt vel claudere oſtium ne ingrediatur, vel aperire ut intret. Probatur hic ſenſus 1. Prius membrum de præmio loquitur, reportabis ſcil. præmium; ergo poſterius loquitur de pœna, peccatum jam inerat ipſi, punitio vero nondum, ſed ad fores erat.* So that, according to theſe learned Commentators, this Place is to be thus turned out of *Hebrew*: *If thou doſt not well, Sin lieth at the door, and to thee is its deſire; but thou mayſt or ſhalt rule over it.* Which ſeems to me to be a much more genuine and rational Interpretation than that of our *Engliſh* or *Latin* Bibles. So that I think I may juſtly except againſt the Authority of ſo doubtful and obſcure a Place, as ſufficient to found your Monarchical Power of elder Brothers in the State of Nature. Ver. 17, 18. Gen. 5. 5.

M. Well, Sir, ſince you are no better ſatisfied with this Teſtimony out of *Geneſis*, for the Divine Right of Primogeniture, I will no longer inſiſt upon it; tho' I am not yet convinced, but that my Interpretation of this Place is truer than yours, ſince I have likewiſe great Authorities on my ſide, both antient and modern, beſides our common Verſions, to authorize it; and therefore ſince I have many other Examples out of Scripture of this kind, I ſhall the leſs inſiſt upon it, but will now proceed to the Examples before the Flood. Firſt therefore, it ſeems highly probable, if not certain, that whatever Civil Government there was in the World before that Period of Time (as it is very rational to believe there neceſſarily muſt be ſome in ſo long a Space as near 200 Years) it was chiefly adminiſtred by thoſe firſt Patriarchs, whoſe Names you'll find particularly recited in the fifth of *Geneſis*:

And

B. P. P. § 52. And ſure that long Chain we there have of them, by whoſe Lives the Chronology of the World is only reckoned 'till the Flood, were in their ſeveral Generations conſiderable Perſons, nay Princes over their own Families, which could not but be very numerous: And indeed the very counting the Age of the World by the Years of their Lives, is to me an Argument, that they were no obſcure, unregarded Men, but that they were either Monarchs or Princes of all Mankind, or at leaſt over that part of the World in which they lived: And *Joſephus* is likewiſe of my Opinion, in the firſt Book of the *Jewiſh* Antiquities, where (as you may ſee) *cap.* 3. he expreſly tells us thus: *Seth autem centeſimo & quinto anno genuit Enos. Qui dum quinque & nongentos vixiſſet annos, rerum curam tradidit filio ſuo Cainæ*: And immediately after proceeds thus, *Lamechum autem filium genuit Mathuſelas, Enocho ortus, cum annos ipſe haberet ætatis* CLXXXVII. *Imperium vero Lamecho eidem tradidit parens, quod jam tenuerat ipſe annos* DCCCCLXIX. *Lamechus pariter Principatum reliquit Noe filio, poſtquam regnaſſet annos* DCCLXXVII. *Noe deniq; rerum ſummam tenuit annos nongentos & quinquaginta; Lamecho annos* 182, *ætatis habenti genitus.* And *Noah*, the laſt of the ten Patriarchs, and the ſurviving Patriarch of all Mankind, was declared by God the univerſal Monarch of the World, as ſoon as he came out of the Ark; to whom he granted the Dominion over all things, as appears by thoſe Words of God to *Noah*, *Gen.* 9. whereby I conceive, that though it hath been thence concluded by Mr. *Selden* in his *Mare Clauſum*, that there was a general Community between *Noah* and his Sons, yet the Text doth not clearly warrant it. For although the Sons are there joined with *Noah* in the Bleſſing, yet it may beſt be underſtood with a Subordination, or a Benediction in Succeſſion; and the Bleſſing might truly be fulfilled, if the Sons, either under, or after their Father, enjoyned a private Dominion: Nor is it probable, that the private Dominion, which God gave to *Adam*, and by his Donation, Aſſignation or Ceſſion to his Children, was abrogated, and a Community of all things inſtituted between *Noah* and his Sons after the Flood. And when *Noah* was left the ſole Heir of the World, why ſhould it be thought that God would diſinherit him of his Birth-right, and make him only Tenant in common with his Children? And if the Bleſſing given to *Adam*, *Gen.* 1. 28. be compared to that given to *Noah* and his Sons, *Gen.* 9. 2. there will be found a conſiderable difference between theſe two Texts. In the Benediction of *Adam* we find expreſſed a ſubduing of the Earth, and a Dominion over the Creatures; neither of which are expreſſed in the Bleſſing of *Noah*, nor the Earth there once named: It is only ſaid, *The Fear of you ſhall be upon the Creatures, and into your Hands are they delivered*; then immediately follows, *Every moving thing ſhall be Meat for you, as the green Herb*, &c. The firſt Bleſſing gave *Adam* Dominion over the Earth, and all Creatures; the latter allows *Noah* Liberty to uſe the living Creatures for Food: Here is no Alteration or Diminiſhing of his Title to an abſolute Propriety of all things, but only an Enlargement of his Commons.

V. 2. 3.
F. O. G. p. 47.
l. 1. c. 4.

Joſeph. Ant. Jud. Lib. 1. cap. 3. § 4. Oxon Edit.

F. As for the Government of the World before the Flood, I have already acknowledged, that the Scriptures being ſilent in it, no Man can affirm any thing poſitively concerning it, whether it was Regal, Ariſtocratical, or Paternal: Neither is it any Proof, that becauſe God thought fit, for our underſtanding the Age of the World, or the Genealogy of *Noah*, from whom all Mankind now takes its Original, to ſet down a Series of the Patriarchs from Father to Son; or, that becauſe they were no obſcure, unregarded Men, that therefore they muſt all be abſolute Princes or Monarchs over their Families. This is, as a Father ſaid long ago, *Divinare magis, quam ſcire*. But I ſee, when Prejudice once blinds our Reaſons, we eaſily make good the old Saying, *Facile credimus quod volumus*. But as for your Quotation out of *Joſephus*, I grant indeed, that at the firſt ſight it makes for you: But ſuppoſe it doth, I cannot ſee how a Man can lay any ſtreſs upon it, ſince the Scripture, being ſilent of any ſuch Monarchy, or Principality in theſe Patriarchs; ſince this Author writes his Hiſtory above three thouſand Years after the Time that theſe Patriarchs lived, which he there mentions; and that we are ſure there were no Authors then extant, that writ of the *Anti-diluvian* Patriarchs, but *Moſes* only, *Joſephus* could ſpeak no otherwiſe than by gueſs, or from ſome uncertain Traditions preſerved amongſt the *Phariſees*, of which Sect he was: To which Traditions, when not warranted by Scripture, how little credit is to be given, our Saviour himſelf teaches us; and alſo the many futilous Traditions of the Rabbins, at this Day, do ſufficiently ſhew us. But, I

ſuppoſe,

ſuppoſe, that by this Word ἀρχὴ, there uſed by *Joſephus*, (which is rendred by the *Latin* Verſion *Principatus*) is not meant any Monarchical Power, but only that Principality or Eminency, or that Reverence and Reſpect which their Poſterity paid them, either in regard of their great Age and Experience, or of the Spirit of God, with which they might be ſuppoſed to be endued, ſufficient to make them to be taken notice of, and reverenced above all other Men living in their Time. I have likewiſe, upon better Conſideration, two other Reaſons to add, why by the *curam rerum*, mentioned in this place, cannot be meant a Regal Power, becauſe *Joſephus* mentions no ſuch thing of *Adam* the firſt Father, and, as you ſuppoſe, Monarch of Mankind; which ſure he would have done, had he believed him endued by God with ſuch a Power.

The ſecond Reaſon is, that if you pleaſe to obſerve, he aſcribes to *Mathuſelah*, *Lamech* and *Noah*, as many Years of Empire, as of Life: So that either this place of *Joſephus* ſignifies nothing at all, or elſe will make nothing to your purpoſe to prove theſe ancient Patriarchs to have been ſo many Monarchs.

I come now to the next Period of Time after the Flood, and whereof I grant we may diſcourſe with more certainty: But I could have wiſhed you would have repeated more particularly the Words, whereby you ſuppoſe God granted to *Noah* alone, an abſolute Dominion over the whole Earth, and all the Creatures therein contained. But I perceive you thought the Words not very favourable for you, or elſe you would have repeated, or read them to me; which ſince you omitted, I pray give me leave to do it for you, and then I will leave it to your ſelf to judge whether there can be any thing drawn from this Text to countenance your Opinion: The Words are theſe, *And God bleſſed Noah, and his Sons,* Gen. 9. 1, 2, 3. *and ſaid unto them, Be fruitful, and multiply, and repleniſh the Earth. And the fear of you, and the dread of you ſhall be upon every Beaſt of the Earth, and upon every Fowl of the Air, upon all that moveth upon the Earth, upon all the Fiſhes of the Sea, into your hand are they delivered. Every moving thing that liveth ſhall be Meat for you; even as the green Herb have I given you all things.* Where you may plainly ſee, that *Noah* hath no Preheminence in this Grant above his Children, who were (for as much as I can ſee) by this Text to be Tenants in common with him of the Earth, and all its Creatures. Nor is there much difference between this Grant to *Noah* and his Sons, and that made to *Adam* and *Eve*, which I proved extended alike to all Mankind, more than that the Brute Animals are here expreſly granted to *Noah* and his Sons for Food, which they were not before to *Adam*.

But I perceive you your ſelf are ſenſible, that this is the moſt plain, and obvious Senſe of theſe Words, and therefore you have thought good to wreſt them ſo as may beſt ſerve your purpoſe; and indeed you deal very cunningly to ſay, that this Grant may be beſt underſtood with a Subordination in Succeſſion. 'Tis true indeed, it ſerves beſt for your purpoſe that it ſhould be ſo underſtood; but that will be beſt underſtood by any Body elſe, which beſt agrees with the plain and obvious Senſe of the Words. Nor will your Reaſon ſignifie any thing, that the Bleſſing might be truly fulfilled if the Sons either under, or after their Father, enjoyed a private Dominion: Since that were to ſay, that a Grant whoſe expreſs Words give a joint Title in preſent, (for the Text ſaith, *Into your Hands they are delivered*) may beſt be underſtood with a Subordination, or in Succeſſion; becauſe 'tis poſſible that in Subordination, or Succeſſion, it may be ſo enjoyed, is all one as to ſay, that a Grant of any thing in preſent Poſſeſſion may beſt be underſtood in Reverſion, becauſe 'tis poſſible one may live ſo to enjoy it. And as for the other parts of this Grant, they are ſo expreſſed that they muſt needs be underſtood to belong to *Noah*'s Sons, not with a Subordination, or in Succeſſion, but as full and equally as to *Noah* himſelf: *The fear of you, and the dread of you* (ſays God) *ſhall be upon every Beaſt*, &c. Can any Body in reaſon ſay, that the Creatures were to fear, and ſtand in awe of *Noah* only, and not of his Sons without his leave, or 'till after his Death? And are the following Words, (*Into your Hands they are delivered*) to be underſtood (as you ſay) if your Father pleaſe, or they ſhall be delivered into your Hands hereafter? You do alſo as wiſely to ſay, that if *Adam* had a private Dominion given him by God, that he would not now abrogate it: For I grant, that if he had given *Adam* any ſuch private Dominion, that there had been no reaſon for him now to have changed it. But I think I have ſufficiently proved at our laſt Meeting, that he had no ſuch private Dominion given him any more than *Eve*, and thoſe Children

T. T. G. c. 4. p. 41.

that

that were to proceed from them. So that this Suppoſition being falſe, there will be no ſuch conſiderable difference as you ſuppoſe between theſe two Texts. For certainly, (though it be not here expreſſed) *Noah*'s Sons had as much right to ſubdue or poſſeſs the Earth, as the Poſterity of *Adam* had before the Flood, and likewiſe to enjoy, or eat the Products thereof; only here is granted to *Noah* and his Sons a Power to kill the Creatures for Food, which was not granted to *Adam*, or thoſe that lived before the Flood: And tho' you will have this Grant to be no diminiſhing of *Noah*'s Title to a ſole Propriety in all things, but only an Enlargement of his Commons; yet methinks it is a conſiderable Privilege not only to himſelf, but his Sons likewiſe, who are hereby impowered to uſe the Creatures for Food, as well as their Father, or elſe their Caſe had been very hard, if when the Creatures were ſufficiently multiplied, they might not have killed ſo much as a *Hare*, or a *Partridge*, without his leave. And if they had a right thus to uſe theſe Creatures, how this differs from an abſolute Propriety in them whenever they are taken, my dull Underſtanding is not able to comprehend.

Ibid. p. 47.

M. Well, ſince you will not admit of this ſole Dominion of *Noah* over all things in the World; I ſhall not longer inſiſt upon it, but will paſs over to thoſe other Authorities I have to produce out of Scripture.

F. I pray, Sir, do; and to let you ſee how fair an Adverſary I will be, I will for the preſent admit, that *Noah* was a Prince or Monarch over all his Poſterity; but then pray ſhew me to whom this Power deſcended after his Deceaſe; for I can ſee nothing in Scripture that favours your Divine Right of Primogeniture, but that every one of *Noah*'s three Sons was a Prince alike over his own Family, and had an equal ſhare in the Earth, and all its Products, the one as much as the other: So that here it is apparent that your ſole Monarchy of the World dwindles into a ſort of *Gavel-kind*, where all the Sons inherit alike.

M. I cannot deny the Matter of Fact to be as you have laid down; but then there might be very good reaſon for it, which might render the ſole Principality of *Noah*'s eldeſt Son to be not only unlawful, but unpracticable; for, in the firſt place, Mr. *Selden* in his *Mare Clauſum* (in the place aforecited) tells us, from the ancient Tradition of the *Jewiſh* Rabbins, *That* Noah *himſelf, as Lord of all, was Author of the Diſtribution of the World, and of private Dominion; and that by the Appointment of an Oracle from God, he did confirm this Diſtribution by his laſt Will and Teſtament, which at his Death he left in the Hands of his eldeſt Son* Shem; *and alſo warned all his Sons, that none of them ſhould invade any of their Brothers Dominions, or injure one another, becauſe from thence Diſcord and Civil Wars would neceſſarily follow.*

F. O. G. p. 49. *l.* 1. *c.* 4.

Nor do I ſee any reaſon why *Noah* might not emancipate his two younger Sons from the Dominion of the elder, and likewiſe give them a ſeparate ſhare of the Earth, and alſo an independant Power over their own Family and Poſterity. In the ſecond place, it might be impracticable for one Man to govern all Mankind, when in a little time it became ſo multiplied and diſperſed over the Face of the Earth, and the Languages ſo confounded by the Act, or Will of God, that it was impoſſible for the three eldeſt Sons of theſe three great Patriarchs to govern them. But during the Life of *Noah*, we do not read that any of his Children, or Deſcendants, withdrew themſelves from him without his leave, but rather the contrary; for it is ſaid, *The whole Earth was of one Language, and of one Speech; and it came to paſs, as they journeyed from the Eaſt, that they found a Plain in the Land of* Shinar, &c. By which Words it appears they kept well enough together; and the very reaſon why they began to build the Tower, was, leſt (ſaid they) *We ſhould be ſcattered abroad upon the Face of the whole Earth:* So that there was no Diſunion amongſt them, nor ſo much as a deſire of it whilſt *Noah* lived.

B. P. P. § 10. Gen. 11. 1, 2.

F. I pray give me leave to anſwer what you have ſaid concerning this Diſtribution of the Earth by *Noah*'s laſt Will, and alſo his making all his Sons Lords, or Monarchs alike, both which ſavour ſo ſtrongly of the Rabbinical Liberty of Invention, that I wonder how any learned Man can believe ſuch idle Stories, eſpecially when the Scripture, and the moſt ancient Hiſtories and Records that are extant in the World, mention no ſuch thing. And though *Joſephus* may, in the place you have cited, ſuppoſe that every one of the Patriarchs he mentions were Princes or Monarchs, yet he doth not ſay any thing like it, concerning the three Sons of *Noah*'s being Monarchs, or of this Partition of the Earth between them; but maketh them to live together in thoſe mountainous Parts, 'till they

deſcended

descended from thence into the Plain: So that it was impossible for *Noah* to make a Distribution of those Parts of the Earth, which were not yet discovered. And it is apparent by the Scripture it self, that a considerable time after *Noah*'s Death all Mankind lived together; and therefore there was no Impossibility (as you suppose) why *Noah*'s eldest Son could not have commanded his Brethren, and their Descendants, they being not as yet dispersed, or separated from each other; as you may see by the first Verses of the 11th of *Genesis*, which you cited but now. So that if *Noah*'s eldest Son was disinherited of his Right of governing his Brethren, and their Descendants, that could not be the cause of it, which you assign: And if *Primogeniture* be a *Divine Right*, appointed by God himself, and unalterable by *Humane Laws*, as you suppose, I cannot see how the Will of a Father, which is but a *Humane Institution*, can ever alter it: For I remember you laid it down as a Maxim, at our last Meeting, *That the Divine Right of the right Heir never dies, can be lost, or taken away*; so that if there hath been any such thing as a Divine Right of Primogeniture belonging to the eldest Son of *Noah*, it is not likely that he would have permitted his two Brothers to have usurped it from him.

M. I shall not insist longer on this Tradition, concerning the Distribution of the Earth amongst the Sons of *Noah*. But certainly it is not a thing to be made so slight of as you do, since *Cedrenus*, a modern *Greek* Historian, is very particular in it; besides, so many other learned Men (and the great *Selden* among the rest) have given countenance to it: And though I grant that Primogeniture is of Divine Right, yet that might very well be altered by *Noah*'s Will, especially since his Children might be satisfied that he being a Prophet, and Preacher of Righteousness, made this Division of his Paternal Power by a Divine Command.

But I shall not dwell longer upon this, but proceed to the next Period of Time; (*viz.*) that of the Confusion, and Dispersion of Tongues, in which there are more evident Footsteps of this Right of Primogeniture, as also of the Patriarchal Power I maintain: And therefore pray turn to the 10th of *Genesis*, and there you will find (after the Recital of the Genealogy of every one of the Sons of *Noah*, whose Descendants are there particularly set down) these Words in the fifth Verse; *By these were the Isles of the Gentiles divided in their Lands; every one after his Tongue, after their Families, in their Nations.* And likewise in the 20th Verse, *These are the Sons of Ham, after their Families, after their Tongues, in their Countries, and in their Nations.* And in the last Verse, *These are the Families of the Sons of Noah, after their Generations, in their Nations; and by these were the Nations divided in the Earth after the Flood.* So that if we consider the first Plantations of the World, which were after the Building of *Babel*, and the Confusion of Tongues, we may find the Division of the Earth into distinct Kingdoms, or Nations, by several Families and Languages, whereof the Sons, or Grand-children of *Noah*, were the Kings, or Governors, by a fatherly Right. And for the preservation of this Power, and Right in these Fathers, God was pleased to bestow upon several Families a Language on each by it self, the better to unite it into a Nation or Kingdom. So that it becoming impossible (as I said before) for the elder Sons or Descendants of these three great Patriarchs to govern all Mankind, who now no longer understood each others Language, it was absolutely necessary that the Heads of the several Families should take that care upon them, and their Children submit to them; wherein they had the Direction of God Almighty, who had commanded them to obey their Parents; and a miraculous Declaration of his Will for their Dispersion, by the confounding of their Language; and that so ordered by God too, that the Descendants of the same Person, and Family, spoke one Tongue: Was not this a declaring these Fathers Princes of these several Families, and Tongues by God himself, who by his Providence had thus confounded their Tongues, and dispersed them by Families, that they could no longer be governed by three or four Patriarchs, but must have as many distinct Governments, as there were different Tongues, there being no means at present of any Intercourse, or Correspondence one with another, or with their former Governors? So that however in this Confusion of Tongues (by which, as *Josephus* supposes, there were seventy two distinct Nations erected) yet were they not confused Multitudes without Heads, or Governors, and at liberty to chuse what Governors, or Government they pleased; but were so many distinct Fa-

F. P. § 4.

F. A. MM. p. 275.

B. P. P. § 10. milies which had Fathers for Rulers over them of the ſame Speech: Whereby it is manifeſt, that even in the Confuſion, God was careful to preſerve *Fatherly Authority*, and *Monarchical Power entire*, by diſtributing the Diverſity of Languages according to the Diverſity of Families; which ſhews that *God* was ſtill for *Government*, and that *Paternal* too; ſince it is evident that every People followed their Anceſtor, or Patriarch, as their Prince or Leader in this Diſperſion, who had a *Patriarchal Authority* over their Poſterity: For by what elſe can you ſuppoſe they could have made their Children and Deſcendants to have followed them as far as the utmoſt Iſles of the *Gentiles*?

F. I confeſs there are many Difficulties as well in the time, as manner of this Diſperſion, according to our common Chronology; for if you ſuppoſe, that the Building of the Tower of *Babel* fell out within two hundred Years after the Flood; as moſt of our Chronologers, who follow the *Hebrew* Account, do; then it is certain, that *Noah*, and his Sons, were ſtill alive, who lived 'till above four hundred Years after the Flood; ſo that either *Noah*, and his Sons, did not travel with the reſt of their Deſcendants into the Plain of *Shinar*, where they built the Tower of *Babel*, which yet ſeems contrary to the Text, which ſays, *All Mankind being of one Language, they travelled*, &c. And if theſe Children and Grandchildren left their Anceſtors at home, what became of their Monarchical Authority, when their Subjects were gone? And you your ſelf do aſſert, that none of *Noah*'s Poſterity divided from him, as long as he lived. So on the other ſide, if you ſuppoſe that *Noah* and his Sons marched along with them in this Expedition, you muſt make them either to have quitted their Authority over their Deſcendants, or elſe to have joined with them in this wicked and fooliſh Enterprize of building a Tower, whoſe top ſhould reach to Heaven; which is very hard to conceive of *Noah*, a Preacher of Righteouſneſs, or his Sons, whom the Scripture no where mentions, or blames for having a hand in this Attempt.

L. 1. c. 4. But if you will lay the fault of building this Tower upon *Nimrod*, as *Joſephus* doth, who makes him a great Tyrant, and a wicked Man, this will make againſt your own Hypotheſis, which ſuppoſes no Rebellion, or Uſurpation, to have been during the Life of *Noah*. So that to avoid theſe Abſurdities, and Difficulties that will follow by the placing the Building of the Tower of *Babel* within two hundred Years after the Flood, (as you muſt do, if you follow the preſent *Hebrew* Account) I think it were much better to embrace the Account of the LXX, which by adding a hundred Years to the Lives of each Patriarch between *Noah* and *Abraham*, makes the Confuſion of Tongues to have happened not 'till about five hundred Years after the Flood; which takes away thoſe Abſurdities I mentioned, of making *Noah* and his Sons to have had a hand in the building of the Tower of *Babel*, or elſe that *Nimrod* did it, whether they would or not; which is likewiſe as hard to ſuppoſe: All which Difficulties, according to this Account, may very well be taken away; ſince then, *Noah* and his Sons were dead, before ever this Tower began to be built. And for the further Proof of this, I refer you to the learned *Iſaac Voſſius* his Vindication of the Tranſlation of the LXX, and his Chronology accommodated to that Account, as moſt agreeable to the ancient *Hebrew* Original: But this is only by the by.

M. I thank you, Sir, for your Solution of this great Difficulty; which I am ſatisfied cannot be better ſolved, than by this Account of the LXX Verſion. But I pray anſwer my Argument, which in my Opinion clearly makes out the Divine Inſtitution, as well as Neceſſity of Patriarchal Power.

F. I was juſt coming to it; and therefore in the firſt place I muſt tell you, that I cannot imagine how you can prove from this Text concerning the Diſperſion of Nations, and their following certain Leaders of their own Family, and Language, when otherwiſe they could not have converſed together; that therefore God muſt be careful in all this Tranſaction to preſerve your imaginary Patriarchal Power entire; of which the Scripture is altogether ſilent. And you might

T. T. G. c. 11. p. 177. as well tell me, that becauſe in *Hannibal*'s, or *Darius*'s Army, there were whole Squadrons of different Languages, who were ranged under Captains of their own Language, or Country, that therefore Fathers, or Grand-fathers were Leaders of each Squadron; or that *Darius*, or *Hannibal*, were careful to preſerve Paternal Authority.

But ſuppoſe I grant you the utmoſt you can ask, yet, ſince God thought fit at this Confuſion of Tongues, that all thoſe of one Tribe ſhould ſpeak the ſame Language, which was not underſtood by any other, it is likewiſe very reaſonable to ſuppoſe, that they could not travel ſo far as the utmoſt parts of *Aſia*, without chuſing, and following ſome Captains or Leaders to be their Guides, and Commanders in ſo long a Journey; and whom could the People ſooner chuſe to follow for this purpoſe than their Fathers, or Grand-fathers, to whoſe natural Affection, Wiſdom, and long Experience, they had from their very Infancy always paid a great reſpect and ſubmiſſion: Yet doth it not therefore follow, that ſuch Fathers or Grand-fathers thus led or commanded their Children and Poſterity (now grown up to be Men and Women) by any natural or Divine Right, or that they followed them otherwiſe, than as an Army of Volunteers, or than as a Caravan in the Deſarts of *Arabia* doth a Captain of its own chuſing. But if you will ſuppoſe any thing beyond this, you will find yourſelf involved in greater Difficulties and Abſurdities. For pray tell me, what great care was there to preſerve a Patriarchal Authority in this Confuſion and Diſperſion, by breaking it into ſo many Parts? Indeed I am ſo blind I cannot ſee it. For as I will not deny, but it was God's Will to confound the Language, and diſperſe the Families of Mankind, both for a Puniſhment, and alſo for the better peopling of the World: So am I not convinced, that God, in acting thus, was at all careful to preſerve the Patriarchal Authority derived from *Adam*. For you cannot deny, but that at the ſame time he deſtroyed the true Supreme Fatherhood of the natural Monarch, or Heir of *Adam*, who could be but one Perſon, as you yourſelf have already aſſerted: Or, can it be any Reaſon to ſay, that God, for the preſervation of Paternal Authority, let ſo many ſeveral new Governments, with their Governors, ſtart up, who muſt all enjoy this Authority? And is it not more reaſonable to ſay, that God was careful to deſtroy this Paternal Authority, when he ſuffered thoſe of *Noah*'s Sons or Deſcendants, then actually in Poſſeſſion of it, to have their Monarchy torn in pieces, and ſhared by ſo many of their Subjects? And would it not be an excellent Argument for Monarchical Government to ſay, when any Monarchy was ſhattered to pieces, and divided amongſt many revolted Subjects, that God was only careful to preſerve Monarchical Power, by rending a great ſettled Empire into a Multitude of little Governments. So that it is altogether irrational to conceive, that if any three or more right Heirs of *Noah* had Paternal Authority or Sovereignty by Right of Fatherhood over Mankind at *Babel*, that the next Moment, (all they yet living) *Seventy two others* ſhould have a like Sovereignty by Right of Fatherhood over the ſame People, divided into ſo many diſtinct Governments: Either then theſe *Seventy two* Fathers were actually Rulers juſt before the Confuſion, and then they were not one People, but an *Ariſtocratical Commonwealth*, and then where was your *Monarchy*? Or elſe theſe *Seventy two* Fathers had *Paternal Authority*, but knew it not, which is hard to ſuppoſe. And if theſe Seventy two Grand-children of the Sons of *Noah* had a Right to divide this Supreme Paternal Authority of *Adam* into as many diſtinct Governments as there were Heads of Families, why might not their Sons have done ſo *in infinitum*? And then there could never be any common Prince or Monarch ſet over them all, but by *Force* or *Conqueſt*, or elſe by *Election*; either of which deſtroys your Notion of the *Divine Right of Primogeniture*.

M. 'Tis a very pleaſant Notion methinks this of yours, that the Poſterity of the firſt Planters of the World ſhould follow their Anceſtors, not as Children or Subjects, but as Volunteers, and from a Reverence (forſooth) and Affection to their Age, Wiſdom, and Experience. Indeed, I am thus far of your Mind, that theſe Children followed their Fathers freely, and were not driven afore them, nor dragged after them with Chains: But to infer from hence, that they owed their Father none of this Service or Attendance, but out of meer good Nature and Gratitude, which are due to Strangers that have obliged us by being our Benefactors, is a Notion that only becomes one, that owns no Right to be derived from Patriarchal or Paternal Power; and ſince there were none of theſe Patriarchs, who were the Leaders of Mankind in this Diſperſion, but might be one or two hundred Years old, if not more; can any thing in Nature look more ridiculous, than for Children and Deſcendants of theſe old Men, to elect them who begat them, to be their Leaders and Governors, at a hundred Years of Age? *B. P. P.* Sect. 60.

Ib. 63. And to give you an Anſwer why Governments might not upon my Principles crumble into new ones, *in infinitum*, I think it may be ſufficient to tell you, that, Firſt, God prevented it, and that for the moſt part by Monarchs, ever ſince the Creation of the World; and although he was pleaſed to permit many Diviſions after this time; yet he would never ſuffer Mankind to be crumbled into ſuch ſmall Diviſions, as to make every diſtinct Houſhold an Independent Government. Secondly, Thoſe Monarchs prevented it, who would be ſure to reduce to their Subjection any Perſon that ſhould attempt to divide himſelf or Family from the reſt, and ſet up for an Independent State, without his leave and liking. Thirdly, The neceſſity of Mankind prevented it, ſuch ſmall parcels of Men not being able to preſerve themſelves, but by uniting with the reſt, for their Support and Protection: So that if you could never ſo clearly prove, that here was no Subordination to the eldeſt Son or Heir of *Noah*, yet this ſignified nothing, for God ordered it ſo to be; and if theſe Grand-ſons of *Noah* were Independent Governors of their own Families, without any Subordination to the eldeſt Son's Son or Heir of *Noah*; yet were they ſtill Sovereign Princes, and much leſs had any dependence upon their own Children and Deſcendants. So that hitherto the Multitude were kept under Subjection, and could not ſet up a Commonwealth, without rebelling againſt thoſe Independent Governors.

Now if in this horrible Confuſion of Tongues, the People, by the Will of God, ſtill fell under the Monarchical Government of theſe Fathers of Families; I deſire to know when they could obtain their Freedom, and in what Age it began?

F. I muſt confeſs you had ſome reaſon to look upon my Notion of the Deſcendants of the Sons of *Noah* following their Anceſtors in this Diſperſion, not as Children or Subjects, but as Volunteers, to be as ridiculous as you are pleaſed to make it, could you have any way proved at our laſt Meeting, that the Power of Parents over their Children and Grand-children to all Generations, is as abſolute and perpetual, as that of a Maſter over his Slaves, and that a Son and a Servant were all one at the firſt; but ſince you failed in that Propoſition, which is the Groundwork of all the reſt, I muſt beg your pardon, if I cannot found the Deſcendants of *Noah*, following their Fathers or Anceſtors in the Diſperſion, upon any higher ground, than meer Gratitude and Eſteem: I mean for all ſuch of them, who were themſelves at that time Maſters or Heads of ſeparate Families; and I deſire to know of you, by what other Motive or Obligation, a great Grand-ſon (for Example) was obliged to follow his great Grand-father to the World's end, as his Prince or Leader, when perhaps his own Father thought fit to lead him another way; and I deſire you to ſhew me if they had (as they might very well have) commanded different things, which was to be obeyed? And how Diſobedience to a Man's own Father in this caſe would have conſiſted with that Law of Nature, which you ſo much inſiſt upon, of honouring a Man's Father? But indeed all this miſtake proceeds from your firſt falſe Notion, which I ſee you cannot yet be quit of, in ſtill ſuppoſing the Obedience and Subjection of Children to their Fathers to be abſolute and perpetual: The contrary to which, I have already made out at our laſt Meeting: And therefore I muſt tell you again, that this Notion of theſe Grand-children, or Deſcendants following their Fathers or Anceſtors, not out of Duty, but Choice, is not ſo ridiculous as you are pleaſed to make it; and though I do not ſuppoſe, that they elected theſe Anceſtors of theirs for their Leaders by a *Balloting Box*; yet this much I am ſure of, that they might prefer, if they pleaſed, the following of their Father or Grand-father, rather than their great Grand-father, if they perceived that he had doted through Age, or elſe by Weakneſs or Infirmities was unable to lead them; or that his natural Temper was ſo Imperious and Tyrannical, that there was no living under his Government? Neither doth the Scripture it ſelf any where declare the contrary, only ſays in general, that by theſe Grand-ſons of *Noah*, the Iſles or Countries of the Gentiles were divided, according to their Families and Nations, without particularly telling us, who were the Princes or Leaders of each Tribe or Family. And to inſtance, if this Diviſion happened in the Time of *Peleg* or *Phaleg*, as the *Greek* LXX makes it, then not *Arphaxad* the great Grand-father, or *Selah* the Grand-father, but *Heber* the Grand-ſon was the Prince or Leader of his Family at this Diviſion: Since it is

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from him that *Joſephus* ſuppoſes the *Hebrews* not only to have deſcended, but to have taken their Names. *L.* 1. *c.* 6.

Nor do you any better anſwer the other Difficulty, how all theſe Seventy two Patriarchs, or great Grand-fathers, could all of them claim alike Regal Power from *Adam* or *Noah*, whoſe right Heir could be but one Perſon. Indeed you tell me, that God ordered it ſo, by appointing every Nation a diſtinct Language, and to be led by the Anceſtor of their Family. This is altogether *gratis dictum*; for though it be true, that the Scripture ſays, that this Diviſion of Tongues was made according to the different Tribes or Families of theſe Deſcendants of *Noah*; yet doth it no where mention their being led or commanded by Seventy two Grand-fathers Patriarchs; and there might be for ought that you or I know, not only Seventy two, but ſeven ſcore ſuch Captains or Leaders of them; Nay, every diſtinct Father of a Family, when this Monarchical Power came to be crumbled into ſo many parts, might as well have claimed a ſhare in this Regal Power, they being by this Confuſion wholly reduced again into a State of Nature.

Nor are your Reaſons ſufficient to convince me of the contrary. As for your firſt Reaſon, that God hath not ſuffered it to be ſo, ſignifies little; for either he hath hindered it by an *expreſs Command*, or by the *ordinary Courſe* of his *Providence*: The former I am ſure you can no where ſhew me; and as for the latter, whenever any Nation or People ſhall be preſſed with the like Neceſſity of ſeparating themſelves from the Government under which they were born, as the ſeveral Families of Mankind had at this Diviſion of Tongues; I ſee no reaſon why they may not have a like Right of quitting their Country, and becoming Subjects to another Government; or elſe of ſetting up one of their own if they can.

As for your ſecond Reaſon, that Monarchs would be ſure to reduce to their Subjection any Perſon that ſhould offer to divide himſelf and Family from the reſt, and ſet up for an Independent State, without their good leave and liking. This is a good Argument indeed, that they were not able to do it, but none at all, that they ought not to do it if they could; ſince this were but to exerciſe that Supreme Paternal Authority with which God hath inveſted them, as much as ever he did any of thoſe Seventy two Deſcendants of *Noah*, who ſet up ſo many new Governments, without the conſent of *Noah*'s right Heir.

Your third Reaſon, I confeſs, is ſomewhat better; That the Neceſſity of Mankind prevented it. But this alſo makes quite againſt you, and only proves, that the Heads or Maſters of Families being ſenſible they could not preſerve themſelves, but by uniting with others for their mutual Safety and Protection, were fain to ſubmit (though by their own Conſents) to ſome Common Power, for their own, as well as their Families Preſervation. So that I cannot ſee from any thing you have ſaid, that God had that great care you ſuppoſe of maintaining your Patriarchal Power, much leſs this Divine Right of Primogeniture.

M. I ſee it is to no purpoſe to diſpute with you any farther about the Patriarchal Power of theſe Sons of *Noah*, and therefore I ſhall proceed to the Times after the Confuſion of Tongues; in which, the firſt Inſtance I ſhall give you, is that of *Jacob*, who when he had bought his Brothers Birth-right, *Iſaac* bleſſed him thus; *Be Lord over thy Brethren, and let the Sons of thy Mother bow down before thee.* By which is plainly denoted a Regal Power or Dominion over *Eſau* his Brother, and the reſt of his Brethren, if he had any. So likewiſe we find— *F. P. c.* 1. §. 8. *Gen.* 27. 29.

F. I pray give me leave to interrupt you a little, for I have a great deal to ſay to this Inſtance you have now brought of *Jacob* and *Eſau*; and therefore I deſire I may ſpeak it before you proceed any further. And firſt, by the way, I cannot but obſerve, that this Divine Right of Primogeniture, which you ſuppoſe here to be meant by the Word *Birth-right*, was capable of being ſold for a Meſs of Pottage, and all *Eſau*'s Heirs diſinherited of their Right, becauſe their Father preferred his Belly before his Honour and Intereſt. But if your Principles are true, a Divine Right never dieth, nor can be loſt, or taken away.

The ſecond thing I muſt take notice of, is your making *Iſaac*, preſently after this Sale of the Birth-right, and as it were in confirmation of it, to have given *Jacob* his Bleſſing; whereas it is apparent by this Story in *Gen.* 25. that many Years paſs'd (perhaps twenty or thirty) between *Jacob*'s buying of this Birth-right, and *Iſaac*'s conferring of the Bleſſing upon him, as any one that will but read the 26th of *Geneſis* may eaſily ſee. But if you had better obſerved this Text, *T. T. G. c.* 11. *p.* 145.

you

you would have found that this Bleſſing was not intended for *Jacob*, but *Eſau*, for whom *Iſaac* then miſtook him. But be it as it will, whether the Bleſſing was given to *Jacob* or *Eſau*, it matters not; for from theſe Words I can by no means gather, that any Government or Superiority was thereby conferred on *Eſau* over *Jacob*, or *Jacob* over *Eſau*. For, firſt, as to *Jacob*, this Bleſſing was never fulfilled, as to be Lord over *Eſau*, who was Prince of Mount *Seir* in *Jacob*'s Life-time: And as for bowing, or any other Token of Superiority, we read indeed, that *Jacob* at his meeting his Brother *Eſau* bowed ſeven times towards him to the Ground, though he had before ſold his Birth-right to *Jacob*; and therefore this Birth-right cannot mean any ruling Power, or Lordſhip over his Brethren;
Ib. p. 146. ſince it is manifeſt from the Text, that *Jacob* had no more Brothers than *Eſau*; nor had *Iſaac* any conſideration of *Jacob*'s having then bought this Birth-right; for when he thus bleſſed him, he took him not to be *Jacob*, but *Eſau*; nor did *Eſau* underſtand any connexion between the Birth-right, and the Bleſſing; for ſays he to his Father, *He hath ſupplanted me theſe two times, he took away my Birth-right, and behold now he hath taken away my Bleſſing.* Whereas, had this *Bleſſing*, to be *Lord over his Brethren*, belonged to the Birth-right, *Eſau* could not have complained of this ſecond Act as a Cheat, *Jacob* having got nothing, but what *Eſau* had ſold him long before.

So that it is plain, Dominion was not then underſtood to belong either to the Birth-right or Bleſſing. And therefore it is more rational to ſuppoſe, that this Word Birth-right only relates to the Right of Prieſthood, which the *Jews* ſuppoſed always to deſcend to the eldeſt Son, before the Law was given: And that by *Bleſſing*, is meant no more, than that double Portion of Goods, which by the *Jewiſh* Law was due to the Firſt-born; and that this is the true Senſe of this place, I deſire you to look in *Gen.* 21. 10. (if you pleaſe to give me your Bible, I will ſhew you the place, and will read the Words to you) where *Sarah* taking *Iſaac* to be Heir, ſays, *Caſt out this Bond-woman and her Son, for the Son of this Bond-woman ſhall not be Heir with my Son:* Whereby could be meant nothing, but that he ſhould not have a Pretence to any equal ſhare of his Father's Eſtate after his Death, but ſhould have his Portion preſently, and be gone. And far-
T. T. G. p. 147. ther we read, *Gen.* 25. 5, 6. That *Abraham* gave all that he had unto *Iſaac*; but unto the Sons of the Concubines which *Abraham* had, *Abraham* gave Gifts, and ſent them away from *Iſaac* his Son, while he yet lived; that is, *Abraham* having given Portions to all his other Sons, and ſent them away, that which he had reſerved, being the greateſt part of his Subſtance, *Iſaac* as Heir poſſeſſed after his Death; but by being Heir he had no Right to be Lord over his Brethren: For if he had, why ſhould *Sarah* deſire to rob him of one of his Subjects or Slaves, by deſiring to have him ſent away?

So likewiſe, if you look into the firſt of *Chron. chap.* 5. *v.* 1. you will find a
Ib. p. 148. place, that plainly confirms this Interpretation, where it is ſaid; *Reuben was the firſt-born, but foraſmuch as he defiled his* Father's Bed, his Birth-right *was given unto the Sons of* Joſeph, *the Son of* Iſrael; *and the Genealogy is not to be reckoned after the Birth-right. For* Judah *prevailed above his Brethren, and of him came the chief Ruler; but the Birth-right was* Joſeph's, though he was the youngeſt Son. And that this Birth-right was *Jacob*'s Bleſſing on *Joſeph*, *Gen.* 58. 22. tells us in theſe Words; *Moreover I have given thee one Portion above thy Brethren, which I took out of the Hand of the* Amorites *with my Sword, and with my Bow.* Whereby it is not only plain, that the Birth-right was nothing but a double Portion of Right due to the eldeſt Son; but the Text in *Chronicles* is expreſly againſt your Opinion, and ſhews that Dominion was no part of the Birth-right; for it tells us, *That* Joſeph *had the Birth-right, but* Judah *the Dominion.* So that unleſs you were very fond of this Word *Birth-right*, without conſidering in what Senſe it is to be taken, you would never bring this Inſtance of *Jacob* and *Eſau*, to prove that Dominion belongs to the eldeſt Son over his Brethren: For if this Bleſſing of *Iſaac* upon *Jacob* ſignifies any thing more than this, it could not relate to his own Perſon, who never ruled over his Brother at all; and therefore it is at moſt no more, than a Propheſy, ſhewing that the *Jews*, as being deſcended from *Jacob*, ſhould in after Times rule over the *Edomites*, or Poſterity of *Eſau*, according to what *Rebekah* had been foretold from God; *Two Nations are in thy Womb, and two manner of Peo-*
Gen. 25. 23. *ple ſhall be ſeparated from thy Bowels, and the one People ſhall be ſtronger than the other People, and the Elder ſhall ſerve the Younger.* And ſo *Jacob* bleſſed *Judah*, and gave

him

him (though not in his own Perſon, but in his Poſterity) the Scepter and Dominion: From whence you might have argued as well, that the Dominion belonged to the third Son over his Brethren; as well as from this Bleſſing of *Iſaac*, that it belonged to *Jacob*, they being both but Predictions of what ſhould long after happen to their Poſterities, and not declaring any Hereditary Right of Dominion in either *Jacob* or *Judah*.

M. I will not rigorouſly inſiſt, that *Primogeniture* is ſuch a *Divine Right* as cannot be altered by any *Humane Act* or *Conſtitution*; but yet I take it to be ſuch a Right, *that without the Father orders it otherwiſe* in his Life-time, or that the elder Brother doth of his own accord depart from his Right, he will have a good Title to his Father's Government or Kingdom, and conſequently to command over the reſt of his Brethren; and therefore *Grotius* makes a great deal of difference between Hereditary and Patrimonial Kingdoms, the former being to deſcend to the eldeſt Son only, but the latter are diviſible amongſt all the Sons, if the Father pleaſe: And hence I ſuppoſe it was, that as Mankind increaſed, one petty Kingdom grew out of another. Thus the Land of *Canaan*, which was peopled by ſix Sons of *Canaan*, and *Philiſtim* the Son of *Mizraim*, had eight or nine Kings in the Time of *Abraham*, and above thirty Kings in *Joſhua*'s Time; which could proceed from no other Cauſe, but the Fathers dividing their Kingdoms in their Life-times, or at their Deaths, amongſt their Sons and Deſcendants; for we hear not of one tittle of *Popular Elections* in thoſe early Days. And I have Proofs enough of this in Scripture. Since thus we find it to have been among the Sons of *Iſhmael* and *Eſau*, as appears by *Gen.* 25 and 26. where it is ſaid, *Theſe are the Sons of* Iſhmael, *and theſe are their Names by their Caſtles and Towns*, &c. *Twelve Princes of their Tribes and Families. And theſe are the Names of the Dukes that came of* Eſau, *according to their Families, and their Places by their Nations.* And hence it is, that in after Ages, Princes did often divide their Kingdoms amongſt their Children, of which you may ſee divers Examples in *Grotius De J. B. l.* 2. *cap.* 7. which Diviſions, when made and ſubmitted to by the eldeſt Son, I doubt not but were good. Yet I think it cannot be denied for all this, that by the Law of Nature or Nations, where there is no Will of the Father declared to the contrary, the eldeſt Son ought to inherit. And this is the Judgment not only of Chriſtian, but Heathen Writers. Thus *Herodotus*, the moſt ancient Greek Hiſtorian, lays it down for a general *Cuſtom of all People or Nations, that the eldeſt Son ſhould enjoy the Empire*; and the *Romans* were likewiſe of this Opinion; and therefore *Livy*, when he ſpeaks of two Brothers of the *Allobroges* contending for the Kingdom, ſays, *The Younger was more ſtrong in Force than Right.* And in another place, *he calls this Right of the eldeſt Son, the Right of Age and Nature*; as alſo doth *Trogus Pompeius* in his Epitome of *Juſtin*, when *he calls it the Right of Nations*; and in another place, *a Right of Nature*, when he ſays, that *Artibazanes*, the eldeſt Son of the *King of* Perſia, *challenged the Kingdom himſelf, which the Order of his Birth, and Nature itſelf appointed amongſt Nations.* I could give you many other Authorities from more Modern Authors, but I rather chuſe to give you theſe, becauſe you cannot except againſt them, as Writers prepoſſeſt by either Jewiſh or Chriſtian Principles. So that if this *Right of Primogeniture* be not abſolutely Divine, yet it is at leaſt moſt Natural and Reaſonable.

B. P. P. §. 68.

Ibid. §. 12.

F. P. c. 1. p. 16. §. 6. p. 40.

Sect. 12.

Herod. Polym:

Juſtin. l. 11.

Juſtin. l. 2.

F. I ſee you are convinced, that this *Divine Right* of *Primogeniture* is not to be proved out of Scripture, and therefore you are contented to fall a peg lower, and to take up with the Right of Elderſhip by the Law of Nature or Nations, which howſoever you are pleaſed to confound them, are for all that two diſtinct things; for if the Succeſſion of the eldeſt Son were by the Law of Nature, it were no more to be altered by the Will of a Father, than the Law of God itſelf; and therefore notwithſtanding all your Quotations, your *Right of Primogeniture* amounts to no more than this, that it hath been a common and received Cuſtom in many Kingdoms or Nations to obſerve it; and therefore *Herodotus*, whom you have now quoted, calls it very rightly *a Cuſtom of Nations, that the eldeſt Son ſhould enjoy the Empire:* Which yet it is not true amongſt all Nations or People, by your own Confeſſion: For then there would have been no difference between Hereditary and Patrimonial Kingdoms; but the eldeſt Son ſhould have inherited alone in the one, as well as in the other. Unleſs you can ſuppoſe, (as ſure you will not) that ſome Kingdoms are to be diſpoſed according to the

Law

Law of Nature, and others not. But if you would have considered *Grotius*, (whom you have now made use of) he would have instructed you better. For in the Chapter you have now cited, he makes the difference between them to depend upon the manner of acquiring the Kingdoms he speaks of; if you please I will shew you the Words, *Sed in Regnorum Successione distingui debent Regna quæ plena modo possidentur, & in Patrimonio sunt, ab his quæ modum habendi accipiunt ex populi consensu, de quo discrimine egimus supra. Prioris generis Regna dividi possunt etiam inter Mares, & Fœminas, ut in Ægypto, & Britannia, olim factum vidimus.*

G. J. B. lib. 2. cap. 7. §. 12.

——Nullo discrimine Sexus,
Reginam scit ferre Pharos,

ait Lucanus; de Britannis Tacitus, Neque enim Sexum in imperio discernunt. But look a little farther, and you will find the reason of the difference between them: *At ea Regna quæ populi libero consensu facta sunt hæreditaria, ex præsumpta populi voluntate deferuntur. Præsumitur autem populus id voluisse quod maxime expedit.* And of this you may see he giveth divers Examples, which we need not particularly recite: But this much is apparent, that *Patrimonial Kingdoms* are divisible among all the Children, because they are supposed to be wholly in the Father's Power, either by *Conquest*, or the *first Plantation* of them: But Hereditary ones, that descend to the eldest Son, can only become so by the free consent of the People, by whom they were instituted; and therefore both *Ishmael* and *Esau*, whose Territories were wholly Patrimonial, might very well divide them alike, amongst all their Sons; but then your *natural Right* of *Primogeniture* is quite destroyed. The like may be said of other Kingdoms where this Custom took place: And therefore those Passages you have cited out of the *Greek* and *Roman* Authors, for the Succession of the eldest Son to be by the *Law of Nature*, is to be understood according to the Sense of those Authors, who often confounded the *Law of Nature* or *Reason*, properly so called, with those commonly used, or received Customs among civilized People; which they called the *Law of Nations*, which yet were not Laws properly so called, since they may, without any transgression of the *Law of Nature*, be practised different ways.

§. 14.

And therefore, though I allow *Primogeniture*, as well in Families as Kingdoms, to have had a just Preheminence by the practice of many civilized Nations, and look upon it as an excellent sort of natural Lot (where the elder Brother is fit to govern) that he should succeed before the younger, to avoid Strife among such Relations, and Civil Wars in Kingdoms: Yet that this is still to be understood according to the Custom of the Country, or Will of the People, that instituted the Monarchy, I desire to go no farther, than that Example that you have but now brought of *Artabazanes*, who was the eldest Son of *Artaxerxes*, but born before he was King, and *Xerxes* his younger Son, but born after his obtaining the Crown; the Matter being referred to the People, they determined it in favour of *Xerxes*; as you will find in *Herodotus* and *Justin*, whom you have but now quoted. And though I grant, that when afterwards in the same Kingdom, the like Controversy was started between *Cyrus* and *Arsicas* (who was afterwards called *Artaxerxes Memnon*) it was judged just the quite contrary way, whether by Right or Favour, I will not determine; yet this may let you plainly see, that this Ancient and Wise Nation had no settled Law, either natural or municipal, concerning this Matter. I could give you several other Instances of the same kind, which you may consult at your leisure in *Grotius*, and other Authors; only this much may be certainly gathered from what yourself as well as I have said concerning it, that there is no certain Rule or Law, either of Nature or Nations, concerning this Matter: And therefore, your Instances of the Sons of *Esau* and *Ishmael* are so far from making out your Hypothesis, that if their Fathers could divide their Kingdoms into as many Parts as they had Sons, without any Subjection to the elder Brother, I can see no reason why every one of their Children or Descendants might not have done the like if they had pleased, till their Principalities had become as small, as those of the Dukes of *Saxony* are at this day; so that I cannot see, to what purpose you have brought these last Instances out of Scripture, unless it were to make against yourself, and to prove that there were then, as there are now in the World, a sort of Princes who may be lawfully so, without claiming any Title from *Adam* or *Noah*, much less by any *Right of Primogeniture.*

M. It is sufficient for my purpose to be able to shew you, from these Examples of the Sons of *Esau* and *Ishmael*, that as well Hereditary as Testamentary Kingdoms, did antiently commence according to the Law or received Custom amongst Nations, without any Consent of the People or Descendants of those that were to be governed by them: And as long as the Succession to such Kingdoms were by any certain or known Rule constantly practised among Mankind, the matter is not much whether the eldest Son succeed to his Father alone, or that his Brethren shared with him in the Inheritance. For since it was God's Will to institute Civil Government amongst Mankind, it must be also his Will to make the Succession to it clear and certain to all the Subjects that were to submit to it, as he hath done, whether one Brother or many succeed; since the Will of the Father is as certain a Rule of Succession, as that by Inheritance; and therefore what you have said in answer to my last Instances of the Sons of *Esau* and *Ishmael* signifies not much.

F. I did not then deny, but grant at our last Meeting, that Families might at first grow up into Kingdoms; but yet I do still (as I did then) assert that such Governments could not be instituted by any Father or Grandfather alone, without the expres or tacit Consent of his Children and Descendants, supposing them once married and separated from their Fathers or Ancestors Families. But it is needless to repeat what I then said; only give me leave to mind you, that at the beginning of this Discourse you maintain'd, that not only Kingly Power in general, but also the Succession to it by the eldest Son, or his next Brother, is of Divine Right or Institution, or else all that you urged concerning the natural Right of Dominion of *Cain* over *Abel* was to no purpose: But now you insist, that Succession by a Testament or Will of the Father is also as much by the Law of Nature as the other; in which I think you are very much mistaken, since the Right of bequeathing Kingdoms, or any thing else, by Testament, is neither prescribed by the Revealed Will of God, nor the Laws of Nature; since all settled Property in Lands or Goods, before the Institution of a Civil Government, proceeding only from Occupancy or Possession, must cease in the State of Nature with the Life of the Occupant or Possessor. Therefore in that State a Testament cannot take place by the Testator's Death; since, as soon as he dieth, his natural Right in the thing bequeathed is quite lost and extinguish'd: So that the Dead not having an Interest in any thing, the Legatee cannot sustain the Person of the Testator, whose Right ceases before that of the Legatee can take place; and therefore the Testament or Disposition of such things may then without any Crime be neglected or altered by the Survivors, unless all those who pretend an Interest in it do agree to it, or swear to see it fulfilled during the Testator's Life-time. And for this cause we find *Abraham* binding his Servant that ruled over his House by an Oath, not to take a Wife for his Son of the Daughters of the Land; and *Jacob* taking an Oath of *Joseph*, not to bury him in *Egypt*; because they doubted whether they could oblige their Sons or Servants to do it by their Testaments. So that it appears evident to me, that the Power of making Testaments, and bequeathing Lands or Goods, is but a Consequence of that Propriety in Lands, Goods, or Dominions, which arises from Compact or common Consent in a Kingdom or Commonwealth, after it is instituted, as I think I am able to prove whenever you please to discourse with me farther about it. But as for the Right of bequeathing Crowns or Kingdoms by Testament, I will not deny but that some Kingdoms may have been bequeathable by their original Constitution, and others become so by Custom; yet I cannot grant that this Right belonged to the Prince or Monarch by the Laws of God or Nature, but proceeded purely from the received Law or continued Custom of that Kingdom: So that you must either confess, that there is no such thing as a Divine Right of Succession, or else it is such a one as signifies as much as nothing, since humane Laws or Constitutions can alter it or take it away. So that after all this pother about this Divine Right, it is not so good as an old Estate Tail, which formerly no Fine could bar. And I must farther tell you, that I cannot assent to your Opinion, that Succession by a Will or a Testament is so certain as that by Inheritance; since all such Testaments must depend upon the Credit of the Witnesses, whose Credit may often be question'd by the Subjects, and who may very well for their own ends make a younger Son to have the whole, or at least a Share in the Kingdom, to whom his Father never intended any; and which was likewise more easy to be done before such time as

Gen. 24. 2, 3.

Gen. 49. 29.

written Wills or Teſtaments, ſolemnly publiſhed according to Forms of Law, came in uſe.

But becauſe you ſuppoſe that the natural Laws of Succeſſion to Kingdoms are ſo plain and certain, that I may a little convince you of your Miſtake in this matter, I ſhall for the preſent ſuppoſe that the Succeſſion of an elder Son or Brother is ſufficiently eaſy to be known; yet I doubt it will not prove ſo in many other Inſtances: And therefore to let you ſee I do not make this Scruple without cauſe, ſuppoſe *Abel* (for example) to have left a Son or a Daughter behind him, when his Brother murder'd him, pray tell me who was to ſucceed after the Death of *Adam*, this Son or Daughter of *Abel*, or *Seth* their Uncle?

M. We do not read of any Children that *Abel* had, and therefore I cannot tell what to ſay to it.

F. Well, but ſince it is probable he might have had Children, pray tell me (ſuppoſing he had) whether this Child, were it Son or Daughter, or *Seth* the Uncle, was to ſucceed?

M. Since you will needs have me ſpeak my Opinion in a thing ſo uncertain, I think this Child, were it Son or Daughter, ought to have ſucceeded before the Uncle.

F. Pray, Sir, tell me by what Law or Rule you thus judge? whether by the Law of God or Nature?

M. I muſt confeſs, God hath preſcribed nothing expreſly concerning it, more
Ver. 8. than what he ſays, *Numb.* 27. that *if a Man dies leaving no Sons, ye ſhall cauſe his Inheritance to paſs unto his Daughter*; with divers other Rules of Succeſſion to Inheritances there ſpecified: And beſides, it is more ſuitable to the Laws of Nature, that the Children of the elder Brother ſhould inherit before their Uncle, there being no reaſon that they ſhould be puniſhed for their Misfortune, in having their Father die before he could ſucceed to the Government.

F. I doubt the Place of Scripture you have cited doth not reach this Caſe of Kingdoms: For firſt, this being a Municipal Law of the *Jews*, could only concern that Commonwealth; and ſecondly, it only relates to private Inheritances: And that this is ſo may be proved from the next Verſe, where it is ſaid, that a Man's Brethren ſhall be his Heirs; that is, all of them were to be Heirs alike, only the eldeſt was to have a double Portion. And if this Law concerning Daughters were to reach the Succeſſion of Kingdoms at this day, the Laws of *France* and other Countries, where Women are barred from ſucceeding to the Crown, would be againſt the Laws of God and Nature: And the like may alſo be ſaid concerning the Succeſſion of the Nephews before their Uncles, or of Uncles rather than the Nephews, whoſe Fathers never enjoy'd the Crown; divers Nations having different Cuſtoms, and that with a like appearance of Reaſon, concerning it. For on the one hand, if the Son of *Abel* might have pleaded, that he was the Firſt-born of the eldeſt Son of *Adam*, and ſo ought to repreſent his Father; *Seth* the Uncle might likewiſe with as good reaſon urge, that he was more nearly related in Blood to *Adam*, as being his Son, than the Son of *Abel*, who was but his Grandſon; and beſides, being older than he, was endued with more Wiſdom and Experience, and conſequently was fitter to govern. But if *Abel* left only one Daughter, or more, I doubt not but the Queſtion would have been harder to be decided; ſince, if Women are not permitted to govern in private Families, they will not (eſpecially amongſt Warlike Nations) be admitted to govern Kingdoms, eſpecially ſince it would be left in her power, not only to govern her ſelf, but by marrying to chuſe a King for her Subjects, whom they do not approve of. And therefore we read, that in divers of the antient Kingdoms of the World Women were excluded from the Succeſſion, as they are in *France* at this Day.

T.T.G. c. 11. *p.* 157, 158. Nor are theſe the only Queſtions that either might then, or elſe have in latter Ages been ſtarted concerning Succeſſion in Kingdoms and Principalities, and have been the cauſe of great Diſputes between Pretenders to Crowns, where a King dies without lawful Iſſue: As, whether a Grandſon by a younger Daughter ſhall inherit before a Grand-daughter by an elder Daughter? Whether the elder Son by a Concubine before the younger Son by a Wife? From whence alſo will ariſe many Queſtions concerning Legitimation, and what by the Laws of Nature is the difference betwixt a Wife and a Concubine? All which can no ways be decided but by the municipal or poſitive Laws of thoſe Kingdoms or Principalities. It may further be enquired, whether the eldeſt Son, being a Fool or

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Mad-man, ſhall inherit this paternal Power before the younger, a wiſe Man? And what degree of Folly or Madneſs it muſt be that ſhall exclude him? and who ſhall be the Judges of it? Alſo whether the Son of a Fool ſo excluded for his Folly ſhall ſucceed before the Son of his wiſer Brother who laſt reigned? Who ſhall have the Regal Power whilſt a Widow Queen is with child by the deceaſed King, until ſhe be brought to bed? Theſe and many more ſuch Difficulties might be propoſed about the Title of Succeſſion, and the Right of Inheritance to Kingdoms, and that not as idle Speculations, but ſuch as in Hiſtory we ſhall frequently find Examples of, not only in our own, but likewiſe other Kingdoms. From all which we may gather, that if the Laws of God or Nature had preſcribed any ſet Rules of Succeſſion, they would have gone farther than one or two Caſes; as concerning the Succeſſion of elder Sons or Brothers, where an elder Son dies without Iſſue; and would alſo have given certain infallible Rules in all other Caſes of Succeſſion beſides theſe, and not have left it to the Will or particular Laws of divers Nations to have eſtabliſhed the Succeſſions ſo many ſeveral ways, as I am able to ſhew have been practiſed in the World.

M. I muſt confeſs you have taken a great deal of pains to perplex the Succeſſion to *Adam*, which ſeems deſigned for nothing elſe, but to make me believe, that if *Adam* or any of his Sons were Kings or Princes, it muſt have been by the *Conſent* or *Election* of their Children or Deſcendants; Which is all one as to ſay, that thoſe antient Princes derived their Titles from the *Judgment* or *Conſent* of the People, the contrary to which is evident as well out of *Sacred* as *Civil* Hiſtory.

F. Since you appeal to Hiſtory, to Hiſtory you ſhall go; and to let you ſee, that I have not invented theſe Doubts about Succeſſion of my own head, and that there might have very well been a real Diſpute about the Succeſſion to *Adam* in the Caſes I have put, may appear by the many Diſputes and Quarrels that have been in ſeveral Nations concerning the Right of Succeſſion between the Uncle and the Nephew; of which *Grotius* is ſo ſenſible, that he confeſſes, in the latter end of the Chapter laſt cited, that where it could not be decided by the *People's Judgment*, it was fain to be ſo by *Civil Wars*, as well as private Combats; and therefore he is forced ingenuouſly to confeſs, that this hath been practiſed divers ways according to the different Laws and Cuſtoms of Nations: And he gives us here a diſtinction between a direct lineal Succeſſion and a tranſverſed, and acknowledges, that amongſt the *Germans*, as alſo the *Goths* and *Vandals*, Nephews were not admitted to the Succeſſion of the Crown before their Uncles. The like may be ſaid of the *Saxons* and *Normans*; and therefore we find in our antient *Engliſh* Hiſtory, that before the Conqueſt the Uncle, if he were older, always enjoyed the Crown before the Nephew; which I can more particularly ſhew you, if you think fit to queſtion it. The like manner of Succeſſion was alſo amongſt the *Iriſh-Scots* for above 200 Years after *Fergus* their firſt King. The like Cuſtom was alſo obſerv'd among the *Iriſh*, as long as they had any Kings amongſt them, and is called the Law of *Taniſtry*. The ſame was alſo obſerved in the Kingdom of *Caſtille*, where, after the Death of *Alphonſo* the Fifth, the States of that Kingdom admitted his younger Son *Sancho* to be King, putting by *Ferdinand de la Cerda*, the Grandſon to the late King by his eldeſt Son, tho' he had the Crown left him by his Grandfather's Will. So likewiſe in *Sicily*, upon the Death of *Charles* the Second, who left a Grandſon behind him by his eldeſt Son, as alſo a younger Son named *Robert*, between whom a Difference ariſing concerning the Succeſſion, it being referred to Pope *Clement* V. he gave Judgment for *Robert*, the younger Son of *Charles*, who was thereupon crowned King of *Sicily*. And for this reaſon it was that Earl *John*, Brother to King *Richard* the Firſt, was declared King of *England* by the Eſtates, before *Arthur* Earl of *Britain*, Son of *Geoffery* the elder Brother: And *Glanvil*, who was Lord Chief Juſtice under *Henry* the Second, in that little Treatiſe we have of his, makes it a great queſtion who ſhould be preferred to an Inheritance, the Uncle or Nephew.

G. J. P. l. 11. *c.* 7. *§.* 30, 31.

But as for Daughters, whether they ſhall inherit at all or not, or at leaſt be preferred before their Uncles, is much more doubtful; ſince not only *France*, but moſt of the Kingdoms of the Eaſt at this day, from *Turkey* to *Japan*, do exclude Women from the Throne: And it was likewiſe as much againſt the grain of the antient Northern Nations; and hence it is that we find no mention of any Queen to have reigned amongſt the antient *Germans* or *Iriſh-Scots*, and never but two among the *Engliſh-Saxons*, and thoſe by *Murder* or *Uſurpation*, and not by *Election*,

as they ought to have done. And upon this ground it was, that the Nobility and People of *England* put by *Maud* the Empress, and preferred *Stephen* Earl of *Blois* to the Crown before her: For tho' he derived his Affinity to the Crown by a Woman, yet being a Man, he thought himself to be preferred before her. So likewise in the Kingdom of *Arragon*, *Mariana* in his History tells us, that antiently the Brother of the King was to inherit before the Daughter. Examples may also be given of divers of the other Instances, but these may suffice.

M. I pray give me leave to interrupt you a'little: For by these Examples you would seem to infer, that these Laws about settling the Succession of Crowns in several Kingdoms depended upon the Will of the People; whereas I may with better reason suppose, that if such Laws and Alterations have been in such Successions, they were made by the sole Will of the first Princes, in which the People had no hand: For in the most antient Monarchies there was a Time, when the People of all Countries were governed by the sole Wills of their Princes, which by degrees came to be so well known in several Instances, that inferior Magistrates needed not resort to them in those cases; and the People being for a considerable time accustomed to such Usages, they grew easy and familiar to them, and so were retained, tho' the Memory of those Princes who first introduc'd them was lost; and after Kings finding it better to continue what was so received, than to run the hazard and trouble of changing them, were, for their own ease and the good of their Subjects, contented they should be still from Age to Age so continued. Which Custom may hold as well in Laws about Succession as other things; and therefore we find that even in those Monarchies, where the People have nothing to do in making Laws, Women are excluded; which could proceed at first from nothing else but the declared Will or Law of the first Monarchs. So likewise the Original of the *Salique* Law is wholly ascribed to *Pharamond*, the first *French* King: And *Mariana* (whom you lately cited) tells us, that *Alphonso* King of *Arragon* made a Law, that where Heirs Male were wanting, the Sons of a Daughter should be preferred before the Aunt; which Law is wholly attributed to the King, for he adds presently after: *Sic sæpe ad Regum arbitrium jura regnandi commutantur.*

P. P. P. 571.

F. Granting all this true that you have said, you cannot but confess, that the Laws of God and Nature have established nothing in this matter, or else it could not be in the power of Kings to make or alter Laws concerning the Succession, as your last Quotation intimates they may: Yet even in the most absolute Monarchies the *Laws* about the *Succession* of the Crown must wholly depend upon the *Consent* of the People, who are to see them observed, or else every Monarch might alter these Laws of Succession at his pleasure; and the Great *Turk*, or King of *France* (now the Assembly of the Estates is lost) might leave the Crown to a Daughter, if either of them pleased, and disinherit the next Heir Male.

But as for the Original of this *Salique* Law in *France*, you'll find your self much mistaken, if you suppose, that that Law was made by the sole Authority of *Pharamond*: For the antient *French* Histories tell us, that the Body of *Salique Laws*, which are now extant, were made by the *common Consent* of the whole Nation of the *Francs*, who committed the drawing of them up to three Judges or Commissioners, and which Laws *Pharamond* did only confirm: And any one that will but consult those Histories may see, that Kings were so far from having the *sole Legislative* Power in their own hand, that they were frequently *elected* by the *Estates*. Nor is that truer which you cite from *Mariana*, that the Kings of *Arragon* had *Power alone* to make Laws: It appears quite contrary from the Constitutions of that Kingdom, where the King could do nothing of this kind without the *Consent* of the *Estates*, and was not admitted to the Crown without taking an Oath to the Chief Justice in the *Name* of the *People*, that he would observe the Laws and Constitutions of the Kingdom, otherwise that they would not be *obliged* to obey him.

Vide Hotoman. Franco-Gallia. cap. 1.

But at once to let you see, that about the Succession of the Sons or Descendants by Daughters, the Cases are much more nice and intricate; and that when such Cases happen in *limited Monarchies*, where there is an *Assembly* of *Estates*, they are the sole Judges in such Differences, may appear by two famous Examples in modern History: The first is in *Scotland*, about 400 Years ago, when after the Death of King *Alexander* III. who died without Issue, when two or three several Competitors claim'd a Right to the Crown, as descended from several Daughters

P. N. M. p. 55.

Vid. Holl. Boeth. L.

of

of *David* Earl of *Huntington*, great Uncle to the last King, the chief of which being *John Baliol* and *Robert Bruce*, the Estates of the Kingdom not being able to decide it, they agreed to refer it to *Edward* I. King of *England*, who adjudged the Crown to *Baliol*: Yet did not this put an end to this great Controversy; for not long after *Baliol* being deposed, *Bruce* revived his Title, and the States of *Scotland* declared him King, whose Posterity enjoy it at this day.

A like Case happened in the last Age in *Portugal*, after the Death of King *Henry*, sirnamed the *Cardinal*, without Issue, when no less than four eminent Competitors put in their Claims; some claiming from the Daughters of *Don Duarte*, youngest Brother to the last King *Henry*; but the King of *Spain*, and other Princes, as Sons to the Sisters of the said King. *Henry* dying without Issue, left ten Governors over the Kingdom, to decide, together with the Estates, the Differences about the Succession; who quarelling among themselves, as also with the Estates, before it was decided, *Philip* II. King of *Spain*, raised an Army, and soon conquered *Portugal*: And yet we have seen in his Grandson's time, that the Estates of *Portugal* declared this Title void, and the Crown was settled in the Posterity of the Duke of *Braganza*, who still enjoy it. *Vid. Marian. Hist. Hisp.*

And how much even Kings themselves have attributed to the Authority of the Estates in this matter, appears by the League made between *Philip* the *Long*, King of *France*, and *David* King of *Scots*, wherein this Condition was express'd: *That if there should happen any Difference about the* Succession *in either of these Realms, he of the two Kings, which remained alive, should not suffer any to place himself on the Throne, but him who should have the* Judgment *of the* Estates *on his side; and then he should with all his Power oppose him, who would after this contest the Crown.* To conclude, I cannot see any means how, if such Differences as these had arisen in the first Generation after *Adam*, I say, how they could ever have been decided without a Civil War, or else leaving the Judgment thereof to the Heads or Fathers of Families, that were then in being: Which how much it would have differed from the Judgment or Declaration of the States of a Kingdom at this day, I leave to your self to judge. *P. N. M. Il. p. 59.* *Vid. Mezeray* in the Reign of *Philip le Long.*

M. I shall not trouble my self to determine how far Princes may tie up their own hands in this matter of the Succession, and leave it to the *States* of the Kingdom to *limit* or determine of it; but from the Beginning it was not so; and therefore give me leave to trace this Paternal Government a little farther: For tho' I grant, that when *Jacob* and his twelve Sons went into *Egypt*, together with their Families, they exercised a Supreme Patriarchal Jurisdiction, which was intermitted, because they were in subjection to a stronger Prince; yet after the Return of these *Israelites* out of Bondage, God from a special Care of them chose *Moses* and *Joshua* successively to govern as Princes, in the place and stead of the supreme Fathers; and after them likewise for a time he raised up Judges, to defend his People in time of Peril. Yet that all these were endued with Regal Authority, may appear, in that *Moses* is called in *Deuteronomy*, a King in *Jeshurun*, (that is, over *Israel.*) And when *Moses* saw that he was to die, he besought God, *to set a Man over the Congregation, that the Congregation of the Lord be not as Sheep which have no Shepherd.* And as for the Judges, it is apparent from the Book that bears their Name, that they had Power of making Peace and War, and of judging in all Cases of Appeal; insomuch that whosoever would not hearken to the Priest, or to *the Judge, even that Man should die.* But when God gave the *Israelites* Kings— *F. P. O.* 57. Deut. 33. 5. *B. P. P.* 35. *Numb.* 27. 16, 17. *Deut.* 17. 11, 12.

F. I pray give me leave to interrupt you a little, for I have a great deal to say against your Notion of the Government of the *Israelites* before they had Kings actually nominated by God; for notwithstanding all you have said, it doth not appear to me, that either *Moses*, *Joshua*, or the Judges, were any more than figuratively or in a larger Sense to be stiled Kings: For as for *Moses*'s being called King in *Jeshurun*, he only calls himself so Poetically, in that excellent Hymn of Blessing, which he bestoweth upon the twelve Tribes: For certainly God did not suppose him to have been a King, when in *Deut.* 17. 14. he speaks of the Children of *Israel* setting a King over them, as a thing that was to happen many Years after, and there lays down Rules how he should govern himself, which had been needless, if they had had a King already. And that *Moses* was not a King, *Josephus* himself shews us in his *Antiquities*, lib. 4. where he makes *Moses* to have instructed the Children of *Israel* at the time of his Death to this purpose: *Aristocracy is the best Form of Government, and the Life that is led under it the most happy; and there-*

therefore let not the desire of any other sort of Government take possession of you, owning no other Master *than the* Laws, *and doing every thing according to it: For God is your King, and that is sufficient for you.* And if *Moses* was no King, then certainly *Joshua* was none neither.

M. Pray give me leave to answer what you have now said against the Kingly Power of *Moses* and *Joshua*: For if you will please to remember, that tho' the *Sanhedrim* had been constituted before this time, yet *Moses* esteemed them as Sheep without a Shepherd, if a Man was not set over them which might go out before them, and which might lead them out, and bring them in; and God approved his Desires, and appointed *Joshua* to succeed him, and the People received him accordingly, and told him: *All that thou commandest us we will do, and whithersoever thou sendest us we will go: according as we hearkened unto* Moses *in all things, so will we hearken unto thee.* If this were not Kingly Power, then is there no such thing. So that this Discourse, which *Josephus* puts into *Moses's* Mouth, seems directly contrary to *Moses's* Thoughts and Practice. And whereas he makes *Moses* to have opposed Obedience to the Laws to Kingly Government, it is a pure *Greek* Notion: For whilst the *Grecians* lived under Kings, they had few or no Laws; but when they set up Commonwealths, they then found the Necessity of having Laws, and then the *Dominion* of *Laws* was opposed to the *Government* of Princes: But this was contrary to the Practice of *Israel*; for they were to live according to their Laws, as well under Kings as without them, in all Estates and Conditions; and their *Kings* were bound to govern them by the *Law*, and not by their *Wills* contrary to the *Law*. So that in this *Josephus* clearly made the antient Customs of his Country to comply with a *Greek* Notion, that had no being for some hundreds of Years after *Moses* was dead.

B. P. P. Sect. 36.

Josh. 1. 16, 17.

And as for the Time of the Judges, even in the Intervals between them, when every one did that which was right in his own eyes, even then the *Israelites* were under the Kingly Government of the Fathers of the particular Families, over whom the Prince or Head of it had likewise a supreme Power.

F. But pray give me leave to speak a little farther: Let me ask you, what is an *Aristocracy*, if this be not? *viz.* an Assembly of the Elders, or chief Fathers of Families of each Tribe, meeting, consulting, and resolving of the publick Affairs of the Commonwealth, under their Head or President, the Chief of the Tribe. And this is the Government for which *Josephus* makes *Samuel* so much afflicted, when the People would quit it for a Monarchy.

M. I think you are much mistaken in this point; for it is no where declared, that these Fathers of Families governed their own Families independently; for then there would have been no publick Government at all: Nor yet is it said, that these Fathers governed by Majority of Voices chosen out of themselves; for then, I grant, it would have been a *Democracy*: Nor yet doth it appear, that a few of the better sort of Fathers of every Tribe governed it by a Council and Magistrates, or that there was such Council of the several Tribes; but on the contrary, every Tribe was governed by the Prince or Head of it; and these Princes *Moses* calls, *the Heads of the House of their Fathers*, in *Numb.* 7. 2. and who were over those that were numbered and made their Offerings. And *Moses* tells us particularly what every Man's Name was; as, Nashon *the Son of* Aminadab, *of the Tribe of* Judah; *and* Nathaniel *the Son of* Zuar, *Prince of* Issachar, &c. Now if there was in those days any Government at all in *Israel*, then were these Princes the Governors of the several Tribes, and so every Tribe was under a Monarch, tho' the whole State of *Israel* was not under any one Person, or constant standing Council, and consequently was a System of little Monarchies.

B. P. P. § 31.

Ver. 12. 18.

F. I am not at all better satisfied with your last Reply: For in the first place I have *Josephus* on my side, who must needs know what the Government of his Country had been, better than you or I; and he expresly calls it an *Aristocracy*, in which the Judge (when there was one) was only in the nature of a General or Stadtholder, to whom the last Appeal was to be made in all Causes: And it is also as plain, that neither *Moses*, *Joshua*, nor the Judges, had *Monarchical Authority*: For tho' it be true, the two first could make *War* and *Peace*, yet this was also with the *Consent* of the *Princes* of the Congregation, as plainly appears by the Story of the Peace made with the *Gibeonites*, which the *Princes of the Congregation confirm'd by an Oath.* Neither could they raise *Taxes* upon the People, or take any thing from them *without their Consent*; and therefore *Samuel* appeals to them, how

Josh. 9.

1 Sam. 1. 3.

little

little he had oppreſs'd them, *Whoſe Ox or whoſe Aſs have I taken? whom have I defrauded? whom have I oppreſs'd?* Neither could they, nor the Judges their Succeſſors, make any *new Laws* for the People; God himſelf being their King and Legiſlator: And therefore what you urge as to the Regal Power of *Moſes* and *Joſhua*, after the *Sanhedrim* had been conſtituted, amounts to no more, but that both of them were Heads, or Captains of the People, to lead them out to War, and bring them back again, which is expreſs'd by going in and out before them; and their Obedience to their Military Orders, as alſo to ſuch things which God hath expreſly commanded, is underſtood by theſe Words: *All that thou commandeſt us, we will do; and whitherſoever thou ſendeſt us, we will go.* Yet ſtill this was with reſpect to their obtaining the Land of *Canaan*; for otherwiſe, if either *Moſes* or *Joſhua* ſhould have gone about of their own heads to have led them again into *Egypt*, I ſuppoſe you will not ſay, the *Iſraelites* were bound either to have followed them, or ſubmitted to them; but rather might have reſiſted them in ſuch caſe.

And therefore *Joſephus*'s Speech, which he makes *Moſes* to deliver, is not ſo ridiculous as you are pleaſed to make it: For the Laws here mentioned by him, and here ſet in oppoſition to Monarchy, were not ſuch Laws as were made by the *Greek* Commonwealth, as you ſuppoſe, but the Law given from God by his hand; and theſe he might well think were ſufficient, with ſuch Power as he and *Joſhua* enjoyed, without having any recourſe to a humane Monarchical Government, ſince God himſelf was their King: And as for the Judges that ſucceeded them, they had much leſs Power than either *Moſes* or *Joſhua*; ſince it is apparent by the Story of *Deborah* and *Barak*, *Judges* the 4th, who were the Princes or Generals of the Tribes of *Zebulun* and *Naphtali*, that they had no Power to force the People to go out to fight againſt the *Canaanites*, whether they would or no. And therefore you will find in the next Chapter, in the Song of Victory which they ſung, that many of the Tribes came not into their aſſiſtance; therefore it is there ſaid, That *for the Diviſions of* Reuben *there were great thoughts of heart*; and therefore they ask, *Why abideſt thou among the Sheepfolds?* &c. And preſently after it is ſaid, Gilead *abode beyond* Jordan: *and why did* Dan *remain in the Ships?* Aſher *continued on the Sea-ſhore, and abode in his Breaches.* And ſo they conclude with, *Curſe ye* Meroz, *curſe ye bitterly the Inhabitants thereof, becauſe they came not to the help of the Lord againſt the mighty.*

So that I am perſuaded it was the want of this Power in the Judges of making Laws, of impoſing Tributes or Taxes, and of forcing Men to ſerve in the Wars againſt their Enemies (which they did before only as Volunteers) that made the *Iſraelites* the more deſirous to have a King over them, like thoſe of other Nations, who were endued with theſe Prerogatives. And therefore the beſt Commentators do interpret the Prediction of *Samuel* concerning *the manner of the King that ſhould reign over them, and would take their Sons for his Chariots and his Horſemen, and to be Captains over thouſands*, &c. *to relate to his Royal Power of enrolling, and making them ſerve in his Army*, either as Officers or Soldiers, and the taking of their Fields and their Vineyards, and the Tenth of their Seeds, *&c.* to give his Officers and Servants; to ſignify no more than his Power of impoſing publick Tribute, and Impoſitions on the People, to maintain his Royal Splendor, and the Neceſſities of the State, as other neighbouring Kings were wont to do; all which they not being uſed to before, they ſhould cry unto the Lord by reaſon of them, as a great Oppreſſion: And that *Saul*, when he came to be King, uſed this Prerogative, of forcing the People to come and ſerve in the War, in a higher manner than *Samuel* or the Judges had done before, appears by the 11th Chapter of this Book, when *Nahaſh* the *Ammonite* came to make War againſt *Jabeſh*: Saul *took a Yoke of Oxen, and hewed them in pieces, and ſent them throughout all the Coaſts of* Iſrael *by the hands of Meſſengers, ſaying, Whoſoever cometh not forth after* Saul, *and after* Samuel, *ſo ſhall it be done unto his Oxen: And the Fear of the Lord fell on the People, and they came out with one Conſent.* 1 Sam. 8. 11, 12.

And it ſeems evident to me, that the *Power*, which *Samuel* had before the Children of *Iſrael* deſired a King, was not *Monarchical*, but mix'd of *Ariſtocracy* and *Monarchy* together, in which *Samuel* as Judge had a Judicial Authority, and likewiſe a Supreme Military Power of leading them out to War againſt the *Philiſtines* and other Enemies; and yet notwithſtanding, the *Supreme Power*, in all other things, remained wholly in the *principal Heads* or Fathers of the Tribes, which whether they were choſen by the People, or enjoyed it by Right of Inheritance,

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I confeſs the Scripture is ſilent; and therefore I am not at all ſatisfied with your Notion, that the Government of theſe People, when they had no Judges, conſiſted of twelve petty Monarchies, under the Heads or Princes of the Tribes; for there is no Authority in Scripture to countenance any ſuch Opinion; the place you bring for it out of the firſt and ſeventh of *Numbers* not at all proving it. For, though I grant there were twelve Princes of the Tribes, whoſe Names are there ſet down, and who are called Heads of the Houſes of their Fathers, yet is it no where ſaid, that theſe were endued with Civil Power, or were chief Rulers over the Tribes; for it is apparent all Civil Power remained then in *Moſes* and the *Sanhedrim*, who under him decided all Controverſies: So that it is moſt natural to ſuppoſe, that theſe Heads of the Tribes were not Civil Magiſtrates, but the Military Leaders, or Captains of each Tribe, when they went out to War, and are the ſame, who, in this Chapter, are called the renowned of the Congregation, *&c.* and Heads of the Thouſands of *Iſrael*.

Nor doth it follow, that becauſe there were ſuch Officers in *Moſes's* Time, that they muſt continue the ſame under the Judges, after ſo many Slaveries and Oppreſſions that this People had undergone; or that if they did ſtill continue, that their Power was Monarchical; or that they could do any thing without the Conſent of the Heads, or Fathers of Families of each Tribe, in whom I ſuppoſe the Supreme Authority was in the Intervals of the Judges: And therefore we find in the ninth of *Judges*, *that the Men of Shechem, and all the Houſe of Millo made Abimelech King*; that is, not over all the Tribes of *Iſrael*, but over *Ephraim* and half *Manaſſes* only, which is to be underſtood by *Iſrael* in this Chapter; where it is ſaid, *ver.* 18. by *Jotham* the Son of *Gideon*, ſpeaking to the Men of *Shechem*, *That they had made Abimelech, the Son of a Maid Servant, King over the Men of Shechem, becauſe he is your Brother.*

So likewiſe after *Abimelech* was dead, the Children of *Ammon* made War againſt the Children of *Iſrael*, as appears by the tenth of *Judges*; and they encamped in *Gilead*, which was a Country on the other ſide of *Jordan*, which was inhabited by the *Reubenites*, the *Gadites*, and the other half of *Manaſſes*; who by themſelves conſulted for their own Safety; for it is ſaid in the laſt Verſe of this Chapter, *And the People and Princes of Gilead ſaid one to another, What Man is he that will begin to fight againſt the Children of Ammon? He ſhall be Head over all the Inhabitants of Gilead.* From which Aſſembly and Conſultation it plainly appears, that they looked upon themſeves to have a Right of ſetting a Prince or Head over them, diſtinct from the reſt of the Tribes of *Iſrael*: And in the next Chapter you will find, that *Jephthah* was made Prince, or Judge by the Elders of *Gilead*. And tho' it is ſaid that *Jephthah* went with the Elders of *Gilead*, and that the People made him Head and Captain over them, yet that can't be meant of all *Iſrael*, but only of the two Tribes and a half, which inhabited the Land of *Gilead*; for we find, Chapter the 12th, the Men of *Ephraim* making War upon *Jephthah*, becauſe he had not called them out to fight againſt the *Ammonites*; and you will find, verſe the 4th, that *Jephthah gathered together the Men of Gilead, and fought with Ephraim, and that the Men of Gilead ſmote Ephraim.* In all which Story it appears, there was none concerned in this War but the *Gileadites* only; that is, thoſe Tribes that inhabited that Region.

I have likewiſe another Authority for this ſeparate Power of each Tribe, when there was no common Judge over them; as may appear from the Story of the *Danites* in the 18th Chapter, who wanting a Country to dwell in, it is there ſaid the Children of *Dan* ſent five Men of their Family to ſpy out a Country for them; which thing could not be done without an Aſſembly of the Chief of the whole Tribe: Neither is there any mention in all this Story of any ſuch Chief, or Prince of the Tribe, as you ſuppoſe, only that ſix hundred Men went by common Conſent, who made War, and conquered the City and Country of *Laiſh*, which they called *Dan*.

But that all the Children of *Iſrael*, during the Intervals of the Judges, did meet in one common Council or Aſſembly, upon any great Accident or Emergency, appears by the 20th Chapter of this Book of *Judges*; where, after the Rape and Murder committed upon the *Levite's* Wife, it is ſaid in the two firſt Verſes; *Then all the Children of Iſrael went out, and the Congregation was gathered together as one Man, from Dan even to Beerſheba, with the Land of Gilead, unto the Lord in Mizpeh. And the Chief of all the People, even of all the Tribes of Iſrael, preſented*

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themſelves in the Aſſembly of the People of God, four hundred thouſand Footmen that drew Sword: Who being thus met, *the Levite, the Husband of the Woman that was ſlain,* having told them the Story, concludes thus; *Behold ye are all Children of Iſrael, give here your Advice and Counſel*; and the Reſult is, *All the People aroſe as one Man, ſaying, We will not any of us go to his Tent, neither will we any of us turn into his Houſe,* &c. Now if this were not as Democratical an Aſſembly, as you can any where meet with in either the *Roman* or *Greek* Hiſtories, I leave it to you your ſelf to judge; though I grant the chief of the People, or Tribes of *Iſrael*, might preſide in it. To conclude; I think I may with very great Reaſon maintain with *Joſephus*, that the Government of the Tribes of *Iſrael* was Ariſtocratical before their ſetting a King over them: For had *Samuel* been endued with an abſolute Monarchical Power (as you ſuppoſe) it had been a very needleſs Requeſt of the Children of *Iſrael*, to ask him to make them a King to judge them, as other Nations.

M. You have made a very long (I had almoſt ſaid a tedious) Diſcourſe to prove, that the Government of the Children of *Iſrael* was not Monarchical before the Time of *Saul*: And though I cannot now well remember all the Particulars of your Diſcourſe, yet this much I can gather from it, that you are fain to confeſs, that during the Intervals of the Judges, *and when there was no King in Iſrael, but that every Man did that which was right in his own Eyes*: Even then the *Iſraelites* were under the Kingly Government of the Fathers of particular Families: For in the Conſultation after the *Benjamitical* War, you mentioned, for providing Wives for the *Benjamites*, we find the Elders of the Congregation bore the only ſway: To them alſo were Complaints to be made, as appears by Verſe 22. And though mention be made *of all the Children of Iſrael, all the Congregation, and all the People*; yet by the Term of *all*, the Scripture means only all the Fathers, and not all the whole Multitude, as the Text plainly expounds it ſelf, in the ſecond of *Chronicles*, where *Solomon* ſpeaks unto all *Iſrael, viz.* to the Captains, the Judges, and to every Governor, the Chief of the Fathers: So the Elders of *Iſrael* are expounded to be the Chief of the Fathers of the Children of *Iſrael*.

F. P. c. 2. § 10.

Judg. 21. 16.

Ver. 1. 2.

1 *King.* 8. 12.

2 *Chron.* 5. 2.

But I am leſs edified with your Notion, in making any of the Tribes to have ſet a Judge, or Captain over themſelves diſtinct from the reſt of the Tribes of *Iſrael*. For the Example you quote of *Abimelech* makes directly againſt you; it being ſaid, Verſe 22d of that Chapter, that *Abimelech reigned three Years over Iſrael*; and in the next Chapter it is ſaid, there aroſe to defend *Iſrael*, *Tola* the Son of *Puah*; and that he judged *Iſrael*, that is, all the twelve Tribes, twenty Years: And if *Gideon*, the Father of *Abimelech*, was Judge over all *Iſrael*, as it appears by the Story he was, it will likewiſe follow, that *Abimelech* his Son ſucceeded (though by Force and Murder) into the ſame Power. It is likewiſe as plain, (notwithſtanding what you have ſaid to the contrary) that the Elders of *Gilead* did not alone make *Jephthah* their Head or Captain. For though I grant *Jephthah* tells them, that if he fought, and delivered them from the Children of *Ammon*, that he would be their Head; yet it is plain by the 11th Verſe of that Chapter, that *Jephthah went with the Elders of Gilead, and it was the People* (*viz.* of all *Iſrael*) *made him Head and Captain over them*; and it appears, that *Jephthah uttered all theſe Words before the Lord in Mizpeh*; where it appears by the 17th Verſe of the former Chapter, the Children of *Iſrael* were then aſſembled and incamped.

Nor am I yet ſatisfied, but that though God, out of a ſpecial Love and Care to the Houſe *Iſrael*, did chuſe to be their King himſelf, yet did he govern them at that time by his Vice-Roy *Samuel*, and his Sons: And therefore God tells *Samuel, They have not rejected thee, but me, that I ſhould not reign over them.* It ſeems they did not like a King by Deputation, but deſired one by Succeſſion, like all the Nations. All Nations belike had Kings then, and thoſe by *Inheritance*, not by *Election*; for we don't find the *Iſraelites* prayed that they themſelves might chuſe their own King: They dreamt of no ſuch Liberty, and yet they were the Elders of *Iſrael* gathered together. If other Nations had elected their own Kings, no doubt but they would have been as deſirous to have imitated other Nations, as well in the electing, as in the having a King: And therefore I am ſure there is nothing to be found in Scripture that countenances your *Notion* of the Peoples having a *right* to *elect* their own King. But this only by the by.

F. P. c. 1. §. 7. But to prosecute the Matter in hand: When God gave the *Israelites* Kings, he re-establish'd the ancient, and prime Right of Lineal Succession to Paternal Government. And whensoever he made choice of any special Person to be King, he intended that the Issue also should have benefit thereof, as being comprehended sufficiently in the Person of the Father, although the Father only was named in the Grant. Which Lineal Right of Succession continued in the Family of *David* until such time as his Successors, by their Idolatry, so far provoked God's Anger as to deliver them up to the King of *Babylon*, under whose, and his Successors Power, they, and their Posterity, continued Subjects for many Ages.

F. I shall not dispute any farther with you (since I see 'tis to no purpose) concerning the Government of the *Israelites*, whether it was Monarchical or Aristocratical before the Reign of *Saul*; nor yet shall I positively assert, that *Abimelech* or *Jephthah*, and other of the Judges, were Rulers of some particular Tribes only. Yet very learned Men are of this Opinion, since they can find no other way, but by a Synchronism in the Times of the Judges, as also of the Years of Rest, and Servitude, as may appear from *Judges* 10. ver. 6, 8. compared with *Judges* 13. 1. to reconcile that great Difference that will be found in the sacred Chronology, from the Time of the Children of *Israel*'s coming out of *Egypt*, to the fourth Year of *Solomon*, in which the Temple was begun to be built, which doth amount to four hundred and eighty Years; whereas, if you please to take the pains to cast up the Years from the Children of *Israel*'s coming out of *Egypt*, to the beginning of *Saul*'s Reign, according to the common Account of the Years of the Judges, reckoned with the Reigns of *Saul*, and *David*, to that time, &c. it will amount to 600 Years, which is more by 120 Years than all the time from the said *Epocha* to the fourth Year of *Solomon* taken altogether.

Vid. Johan. Marshami Chron. Can. Sect 11. *p.* 291, 292, & 293.

1 *Kings* 6. 1.

But as for the several Tribes alone consulting and ordering their own Affairs, it is so plain, from the Examples of the People, and Princes of *Gilead*, as also from that of the *Danites*, that you have nothing to object against it. And so likewise in the Instance of all the Children of *Israel* meeting and consulting what to do with the *Benjamites*; where, since you cannot deny the Matter of Fact, you have no way to evade it, but by supposing I know not what Kingly Authority in the Fathers of particular Families, whom you do suppose to have then bore the only sway; because it is said, in that Chapter you quoted, that in the Consultation after this War, the Elders of the Congregation proposed it to them, saying, *How shall we do for Wives for them that remain, seeing the Women are destroyed out of Benjamin?* And then follows the Result of the Congregation in the next Verse; *And they said* (viz. all the Congregation agreed) *that there must be an Inheritance for them that be escaped out of Benjamin*, &c. all which amounts to no more than what I granted at first, that the Heads, or Elders of the Tribes presided in this Assembly, and put the Question to them: Which is so necessary in all great Assemblies, that without such Officers they cannot come to any Resolution; and therefore you should do well to prove the Monarchical Power of these Elders by some better Authority than this Text.

But if the Judges had Monarchical Power, as you suppose, notwithstanding all you have said against the Peoples electing them, it plainly appears, by the Examples of *Abimelech* and *Jephthah*, that the People did often elect a Judge, or Captain over them, without any Nomination by, or Inspiration from God.

But to return to that which is most material: Your supposed Restauration of *Patriarchal Government* under *Moses* and *Joshua*, after the *Israelites* returned from the *Egyptian* Bondage, I cannot but here by the way take notice, that the Truth will sometimes slip from you before you are aware: For if it be true what you at first asserted, at our last Meeting, *That a Servant, or Slave, and a Subject, were all one at the first; and also that all Monarchs are endued with Fatherly Power*; then if *Pharaoh* was a Monarch, the Children of *Israel* were not, according to your Principle, brought into Bondage by *Pharaoh*, but they *were only adopted into another Fatherly Power*. But you should have done well to have shewn more clearly than you have hitherto done, that this *Patriarchal Jurisdiction* was exercised by *Abraham*, *Isaac* or *Jacob* before the Descent into *Egypt*, since all the Instances you have yet given of such a Power, have proved very unlucky. For though I read in St. *Stephen*'s Speech in the *Acts*, that *the Patriarchs moved with Envy sold Joseph into Egypt*; yet is it no where mentioned, (nor I believe will you your self affirm)

Acts 7. 9.

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that these Patriarchs ever had a *Monarchical Power*. For 'till *Jacob* went into *Egypt*, that Power was solely in him, according to your Principles; and after that in *Pharaoh* as King of *Egypt*: So that though I can find the Word *Patriarch* (but once) in Scripture, yet I can see no ground for your *Patriarchal Authority*, or *Jurisdiction*; and therefore that could suffer no Intermission, which never had any beginning in Nature.

But after this you tell me, that God chose *Moses*, and *Joshua* successively to govern as Princes, in the place of those Supreme Fathers, or Patriarchs; which is easily, I confess, affirmed, only it wants Proof: For though you endeavour to to prove that all *Paternal Power* was Regal, yet it still remains unproved that all *Regal Power* is Paternal. It is true, that God did appoint *Moses* and *Joshua* to be the Rulers of his People under him; but that doth not at all make out that they succeeded in the stead of Supreme Fathers, much less that they succeeded as Heirs, or Successors, to the *Patriarchal Power* of *Adam*. For *Moses* and *Joshua* being chosen by God to be Rulers of his People, will no more prove, that Government belonged to *Adam*'s Heir, as to his Fatherhood, than God's chusing *Aaron*, of the Tribe of *Levi*, to be Priest, will prove that the Priesthood belonged to *Adam*'s Heir, or the prime Fathers, since God could chuse *Aaron* to be Priest, and *Moses* Ruler over *Israel*, though neither of those Offices were ever settled on *Adam*'s Heir, or the first Patriarchs. So likewise for what you say concerning God's raising up the Judges to defend his People, proves *Fatherly Authority* to be the Original of Government just after the same rate; and cannot God raise up such Men, unless *Paternal Power* give a Title to their Government? T.T.G.p.201.

But to come to your darling Instance, the giving of the *Israelites* Kings, whereby you suppose God re-established the antient prime Right of Lineal Succession to Paternal Government. This I can by no means understand; for if by Lineal Succession, you mean to *Adam*, I desire to know how you will make it out, that either *Saul*, or *David* could be Heirs of *Adam*'s Power? or how the Power that those Kings were endued with by God, was the same Power which *Abraham*, *Isaac*, and *Jacob* enjoyed before. For if you please to consider it, your Hypothesis consists of two Propositions: The first is, that all *Paternal Power* is the same with *Regal Power*; which if it be proved not to be true, the other convertible Proposition, *viz.* that all *Regal Power* is Paternal, will likewise be as false. Nor is what you said last of all any truer than the rest, that whensoever God made choice of any Person to be King, he intended that the Issue (I suppose you mean his Issue) should have the benefit thereof: For either *Moses*, and *Joshua*, and the Judges, were no Kings, (though you have asserted the former to be so) or else they had not the benefit of this Grant. But certainly *Saul* was a King, and yet his Issue never succeeded. But you speak very warily to suppose this Grant to be made to the Issue in general, without specifying in particular who should enjoy it; because I suppose you are sensible, that *Solomon*, whom God expresly appointed to be *David*'s Successor; and *Jehoahaz*, whom the People of the Land made King in the room of *Josiah*, were neither of them eldest Sons of the Kings their Fathers. To conclude, I desire you would shew me what Relation or Title all Kings, or Princes now a-days have, or can claim as Heirs to *Adam*, or *Noah*; or how that Power with which God endued those Fathers of Mankind, is the same which you say all Princes, or Monarchs, may now claim to be given them by God: For, I confess, I can see no Relation at all between them. 2 Chron. 26. 1.

M. It may indeed seem absurd to maintain, that Kings now are the Fathers of their People, since Experience shews the contrary. It is true, all Kings are not the natural Parents of their Subjects, yet they all either are, or are to be reputed the next Heirs to those first Progenitors, who were at first the natural Parents of the whole People, and in their Right succeed to the Exercise of Supreme Jurisdiction; and such Heirs are not only Lords of their own Children, but also of their Brethren, and all others that were subject to their Fathers. And tho' I have all along supposed, that *Paternal Government* was at first *Monarchical*, yet I must likewise grant, that when the World was replenished with People, that this *Paternal Government* by *Succession* ceased, and a new kind of it started up either by *Election*, *Conquest*, or *Usurpation*; yet this was still *Paternal Power*, which can never be lost, or cease, though it may be transferred, or usurped; or it may be ordained anew in a Person who otherwise had no Right to it before. Thus F. P. § 8. F. D. O. p. 67.

God, who is the giver of all Power, may transfer it from the Father to the Son, as he gave *Saul* a Fatherly Power over his Father *Kiſh*.

Ibid. p. 70. So that all Power on Earth is either derived or uſurped from the Fatherly Power, there being no Original to be found of any other Power whatſoever; for if there ſhould be granted two ſorts of Power without any Subordination of one to the other, they would be in perpetual ſtrife which ſhould be Supreme, for two Supremes cannot agree; if the Fatherly Power be Supreme, then the Power of the People muſt be Subordinate, and depend on it; if the Power of the People be Supreme, then the Fatherly Power muſt ſubmit to it, and cannot be exerciſed without the Licence of the People, which muſt quite deſtroy the frame and courſe of Nature.

F. If this be all you have to ſay for the Proof of ſo weighty an Hypotheſis, I confeſs I wonder how you, or any rational Man can lay ſo great ſtreſs upon it: For though I ſhould grant you, that ſome Fathers of Families at firſt became, by the tacit or expreſs *Conſent* of their Children and Deſcendants, to be Kings or Princes over them; doth it therefore follow, that all Kings govern by *Right of Fatherhood* at this Day.

'Tis true you tell me, that all Kings, *though they are not now the natural Fathers of their People, yet are ſtill to be eſteemed as ſuch by them, as ſucceeding either as Heirs, or Succeſſors to thoſe that were ſo.* I grant indeed, if any Kings now adays could prove themſelves right Heirs to *Adam* or *Noah*, this were ſomewhat to the purpoſe; but to talk of a Paternal Power, proceeding from Election, Conqueſt, or Uſurpation, is perfect *Jargon* to me; for pray tell me, can a Man become endued with Paternal Power over me, by my Electing him to be my King? Or can a Man, by Conqueſt or Uſurpation, oblige me to yield him a Filial Duty, and Obedience? For if this were ſo, if a Father of a ſeparate Family (ſuch as *Abraham* was) ſhould be conquered by the Head of another ſeparate Family, nay though he were a Thief or a Robber, if once the true Father were killed or deſtroyed, all the Children and Deſcendants of the Family muſt pay the ſame Duty and Obedience to this unjuſt Conqueror or Robber, as to their true Father: And the ſame may be ſaid in Uſurpations, in caſe after the Death of ſuch a Father of a Family, a younger Brother or Nephew ſhould get Poſſeſſion of the Houſe and Eſtate, and force all his Brethren and Kinſmen to ſubmit to him, they muſt then all own him to be endued by God with the ſame Paternal Power, which their Father or Grand-father had; and conſequently muſt Honour and Obey him as their true Father: Both which Examples, being contrary to the common Senſe and Reaſon of Mankind, may ſhew you, how abſurd this *Hypotheſis* is; whereas indeed, Fatherhood being a Relation of Blood, the Duty and Reſpect we owe to our Father, proceeding from that Piety and Gratitude we owe him, both for our *Generation* and *Education*, how can this Relation, or theſe Obligations be ever transferred to, or uſurped by another; ſo that any other Man can become my Father, or I owe him the like Filial Duty and Reſpect, as to him that begot me and brought me up?

And though I grant that God may confer a *Regal Power* on whom he pleaſes, either by his expreſs Will, or the ordinary courſe of his Providence; yet when ſuch a Perſon, who was not a King before, doth become ſo, I utterly deny that the Power he hath then conferred upon him, is a *Paternal Power* in relation to his Subjects; which is evident from your own Inſtance of *Saul*'s becoming a King over his Father *Kiſh*. For though you ſay, *that God then conferred a Fatherly Power* on *Saul* over his own Father, this is a great miſtake: For then *Saul* would have been immediately diſcharged from all the Duties of Piety and Gratitude, which he owed his Father; and they were all transferred from *Kiſh* to *Saul*; ſo that after he became King, he might have treated his Father with no more Reſpect or Deference, than any other Subject; which is contrary to God's Commandment, that bids all Men *Honour their Father and Mother*. And I know not how Kings can be excepted out of this Precept. So that your miſtake ariſes from this prepoſterous confounding of *Paternal Authority* with *Regal Power*: And becauſe *Adam*, *Noah*, or any other Father of a ſeparate Family, may be a Prince over it in the State of Nature, that therefore every Monarch in the World is alſo endued with this *Paternal Power*: Which that they are diſtinct, may farther appear from your own ſuppoſed *Monarchical Power* of *Adam*, who though granting him to have been a Prince over his Poſterity, yet did not this diſcharge any of

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his Deſcendants from their Duty and Obedience to their own Father: And though I confeſs you talked at our laſt Meeting of a *Fatherly Power* to be exerciſed in ſubordination to the *Supreme Fatherly Power* of *Adam*; yet this is a meer *Chimera*: For *Filial Honour* and *Obedience*, being due by the Commandment only to a Man's own natural Father, can never be due to two different Perſons at once, ſince they may command contradictory Things; and then the Commandment of *Honour* (that is, obey) *thy Father*, cannot be obſerved in reſpect of both of them; and therefore granting *Adam*, or *Noah*, to have exerciſed a *Monarchical Power* over their Children and Deſcendants, it could not be as they were Fathers or Grand-fathers, when their Sons or Grand-children were ſeparated from them, and were Heads of Families of their own, for the Reaſons already given; ſo that if they were Princes in their own Families, whilſt their Sons or Grand-children continued part of them, it was only as Heads or Maſters of their own Families, but not by any ſuch *Patriarchal* or *Paternal Authority* as you ſuppoſe. But as for the Concluſion of your Diſcourſe, it being all built upon this falſe Foundation, that all Power on Earth is derived or uſurped from the *Fatherly Power*; I need ſay no more to it: For if that be falſe, all that you argue from thence, concerning the ſubordination of all other Powers to this, will ſignify nothing.

M. I think I can yet make out my *Hypotheſis*, notwithſtanding all you have ſaid againſt it: For though I grant the *Paternal Relation* itſelf can never be uſurped or transferred; yet you may remember, I at firſt affirmed, that *Adam* was not only a Father, but a King and Lord over his Family, and a Son, a Subject, a Servant, or a Slave, were one and the ſame thing at firſt; and the Father had Power to diſpoſe of, ſell, or alien his Children to any other; whence we find the Sale and Gift of Children to have been much in uſe in the beginning of the World, when Men had their Servants for a Poſſeſſion and an Inheritance, as well as other Goods; whereupon we find the Power of Caſtrating or making *Eunuchs* much in uſe in old Times. And as the Power of the Father may be lawfully transferred, or aliened; ſo it may be unjuſtly uſurped. And though I confeſs no Father, or Maſter of a Family, ought to uſe his Children thus cruelly and ſeverely, and that he ſins mortally if he doth ſo; yet neither they, nor any Power under Heaven can call ſuch an *Independent Father* or *Monarch* to an account, or puniſh him for ſo doing. *F. P.*

F. I am glad at laſt we are come to an Iſſue of this doughty Controverſy. And though I forced you at our laſt Meeting to confeſs, that Fatherly Power was not deſpotical, nor that Fathers upon any *account whatſoever* were abſolute Lords over their Children, and all their Deſcendants, in the State of Nature; yet now I ſee, to preſerve your firſt *Hypotheſis*, you are fain to recur to this Deſpotical Power of Fathers in the State of Nature: Becauſe without ſuppoſing it, and that it may be transferred or uſurped, Princes at this Day (whom without any Cauſe you ſuppoſe to be endued with this Paternal, Deſpotick Power) could never claim any Title to their Subjects Allegiance. And then much good may do you with your, and Sir *R. F*'s. excellent diſcovery: For if, as you yourſelf acknowledge, Princes are no longer related in Blood to their Subjects, any nearer than as we all proceed from *Adam* our common Anceſtor, that Relation being now ſo remote, ſignifies little or nothing, ſo that the true Paternal Authority being loſt (as you confeſs) the Deſpotick Power of a Lord over his Servants, or his Slaves, only remains: Since therefore you make no difference in Nature between Subjects and Slaves, then all Subjects lie at the Mercy of their Kings, to be treated in all things like Slaves, whenever they pleaſe; and they may exerciſe an abſolute Deſpotick Power over their Lives and Eſtates, as they think fit: So that I can ſee nothing that can hinder them from ſelling their Subjects, or caſtrating them, as the King of *Mingrelia* doth his Subjects at this Day; and as the *Great Turk* and *Perſian* Monarchs do uſe thoſe Chriſtian Children, whom they take away from their Parents to make *Eunuchs* for their *Seraglio's*; and then I think you have brought Mankind to a very fine paſs, to be all created for the *Will* and *Luſt* of ſo many *ſingle* Men, which if it ever could be the *Ordinance of God*, I leave to yourſelf to judge.

M. I was prepared for this Objection before, and therefore I think it will make nothing againſt this *abſolute Power*, with which I ſuppoſe God to have endued *Adam*, and all other Monarchs at the firſt: So that I am ſo far from thinking that this Doctrine will teach Princes Cruelty towards their Subjects, that on the *B.C. P.* §. 3.

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contrary, nothing can better inculcate their Duty towards them: For as God is the Author of a *Paternal Monarchy*; ſo he is the Author of no other. He introduced all but the firſt Man into the World, under the Subjection of a *Supreme Father*, and by ſo doing, hath ſhewn, that he never intended there ſhould be any other Power in the World, and whatever Authority ſhall be extended beyond this, is accountable to him alone; ſo that Princes are bound to treat their Subjects, as their Children, with Mercy and Lenity, as far as they are capable of it, and not as their Brutes. And granting that Subjects and Servants, or Slaves, were at firſt all one, yet I think even they ought to be treated only as younger Children, yet as Children ſtill: Nay even conquered People, that are in ſome Countries treated as Slaves, and but a little better than Brutes, have certainly a very good Appeal to the Tribunal of God againſt their Princes, who will undoubtedly right them in another World, if they ſuffer patiently in this. If it be the Character of a good Man, that he is Merciful to his Beaſt, I doubt not but the very Brutes have a Right to be governed with Mercy and Juſtice, and that God who is their Creator, as well as ours, will puniſh cruel Men if they tyrannize over them; and much more if any Man ſhall exerciſe Cruelty on another Man, who is of the ſame, not only Nature, but Blood.

Whereas all other *Hypotheſes* leave the Prince at Liberty to make his Bargain with his Subjects as well as he can; and if they be brought by Force, or Fraud, to an entire Submiſſion at Diſcretion, they may then be treated accordingly, and muſt ſtand to their Compact, be the Terms never ſo unequal, and then the Caſe of a Man, and a Brute, may differ very little; and if the Subject may reſiſt, the Prince may take care to prevent it, and the War may be juſt on both ſides, which is impoſſible.

I could likewiſe ſhew you many other Benefits that would accrue both to Princes, and Subjects, were this *Hypotheſis* but once generally taught, and believed by both of them.

F. I pray, Sir, ſpare the giving yourſelf that trouble, for I will not diſpute how honeſtly this *Hypotheſis* may be deſigned, or what mighty Feats it might do, were it once univerſally received. But this neither you, nor I, can ever expect will come to paſs, becauſe neither Princes, nor People, will ever believe it to be true: For in the firſt place, the People will never be convinced of it, it being above a vulgar Underſtanding, that their Princes, whom they are very well aſſured are not their Fathers, nor yet right Heirs to *Adam* or *Noah*, ſhould notwithſtanding lay claim to a *Paternal Authority* over them. In the next place, Princes can never believe that they are Fathers of their People, for the ſame Reaſon: I grant indeed, that they may be very willing to believe one half of your *Hypotheſis*, that they are abſolute Lords and Maſters over them, and ſo would be willing upon that account to uſe their Subjects like Slaves; but that they ſhould look upon themſelves as Fathers of their People, and the Heirs or Aſſigns of *Adam* or *Noah*, I think no Prince in Chriſtendom can be ſo vain to believe. So that whatever Power *Adam* or *Noah*, or any other Father, might been intruſted with by God, becauſe of that natural Affection which they were ſuppoſed to bear toward their Children; yet ſure Princes at this Day can lay no claim to it, ſince none but true Fathers can be endued with this *Paternal Affection.*

And whereas you ſuppoſe, that Princes ought to treat their Subjects, nay even thoſe that are conquered, like Children, and not like Slaves, or Brutes; this can have very little effect upon them, who can as little believe it, as the People. For if Monarchical Power is not Paternal (as I think I have clearly made out) then there can lie no Obligation upon Monarchs to treat their Subjects like Children: And therefore, ſince the *Deſpotical* or *Maſterly Power* only remains, which is ordained principally for the good and benefit of the Maſter, and not of the Servant or Slave; who can blame Princes, if they exact the utmoſt of their due Prerogatives, and ſo treat their Subjects like Slaves, whenever it ſerves their Humour or Intereſt ſo to do? Nor are they any more to be blamed for thus exerting their Power, than a Maſter of *Negroes* in the *Weſt-Indies* is, for making the beſt of the Service of thoſe Slaves, whom he hath bought with his Money, or are born in his Houſe: Whom though I grant he is not to uſe like Brute Beaſts, for the Reaſons you have given; yet doth it not therefore follow, that he is obliged to uſe them like his younger Children; for then ſure he could not have a Right to keep them for Slaves as long as they lived, and to let them enjoy nothing

thing but a bare miſerable Subſiſtance. And there is very good reaſon for this, for almoſt every Planter in *Barbadoes* knows very well the difference between the Relations of a Father, a Maſter, and a Prince, and that the one is not the other; and it is from your jumbling together theſe three different Relations, of a Son, a Slave, and a Subject, that hath led you into all theſe miſtakes. For though it ſhould be granted, that the Right of a Maſter over his Slaves may be acquired by Conqueſt, or aſſigned to, or uſurped by another; yet certainly, the Authority or Relation of a Father, and the Deſpotical or Civil Power of a Monarch, can never be acquired by Conqueſt, nor yet uſurped, without the conſent and ſubmiſſion of the Children and Subjects.

And therefore to conclude, I do not think your *Hypotheſis* one jot the better, by your founding it upon an *Imaginary Paternal Power*, rather than upon *Compact*, which I am ſure can never be made upon ſo unequal Terms, as to render the Caſe of a Man and a Brute very little different; ſince it would be to no purpoſe for any Subject to make a Bargain with their Monarch, or Conqueror; and yet, to leave themſelves in as bad, or worſe condition, than they were in the State of Nature: So that however convenient your *Hypotheſis* may be, either for Prince, or People, it ſignifies no more than the Popiſh *Hypotheſis* of the *Infallibility of the Pope*, and a *General Council*, which becauſe they ſuppoſe neceſſary, and is indeed very beneficial for their Church; therefore God had conferred it upon them: But how falſe a way of Reaſoning this is, hath been ſufficiently demonſtrated. The Application of this Compariſon is ſo obvious, that I leave it to you to make.

M. I cannot but think, for all you have yet ſaid, that God hath endued all Princes with a *Paternal Authority*, and for this, I have the Church of *England* on my ſide, which in its Catechiſm, in the Explanation of the Duties contained in the fifth Commandment, *Honour thy Father*, &c. doth comprehend under that Head, not only to *Honour and Succour our Fathers and Mothers, but alſo to Honour and Obey the King, and all them that are put in Authority under him*; as if all Power were originally in the Father: So that this Command gives him the Right to govern, and makes the Form of Government Monarchical. And if Obedience to Parents be immediately due by a natural Law; and Subjection to Princes, but by the Mediation of an Humane Ordinance, what reaſon is there, that the Laws of Nature ſhould give place to the Laws of Men? As we ſee the Power of the Father over his Child gives place, and is ſubordinate to the Power of the Magiſtrate. And that this is not the Doctrine of Chriſtianity alone, but was alſo believed by the beſt Moraliſts amongſt the Heathens, may appear by this remarkable Paſſage out of *Seneca de Clementia*, which is ſo put to this purpoſe, that I took the pains to tranſlate it into Engliſh in my Common-place-Book: Some of which I will now read to you. *What is the Duty of a Prince? That of kind Parents, who uſe to chide their Children ſometimes ſweetly, and at other times with more ſharpneſs, and ſometimes correct them with blows. And after having ſhewn, that a good Father will not proceed to diſinherit his Son, or inflict any more ſevere Puniſhments upon him, till he is paſt all hopes of Amendment*; he proceeds thus: *No Parent proceeds to Extirpation, till he hath in vain ſpent all other Remedies. That which becomes a Parent, becomes a Prince, who is ſtiled without flattery* the Father of his Country; *in all our other Titles, we conſult their* (i. e. the Emperors) *Honour. We have called them the Great, the Happy, the Auguſt, and heaped upon ambitious Majeſty all the Titles we could invent, in giving theſe to them: But we have ſtiled him* the Father of his Country, *that the Prince might conſider the Power of a Father was given him: Which is the moſt temperate of all Powers, conſulting the Welfare of the Children, and preferring their good before its own.*

F. P. § 10. F.O.G. p. 254.

Lib. 1. c. 14.

And as for your Objection, why Princes cannot be loved and reverenced, as if they were our Fathers, becauſe not being our Fathers indeed, they may poſſibly want that Natural and Fatherly Affection to their Subjects, and conſequently may tyrannize over them; I think this is eaſily anſwered: For,

Firſt, God, who is, and ever was the true Diſpoſer of Kingdoms, hath in his Hands the Hearts of all Princes, and endows them with ſuch Affections as he thinks fit, not only towards the People in general, but towards each particular Perſon: And therefore, as he was the Author of all Government, and is ſtill the Preſerver of it; ſo no inconvenience can happen, but he is able to redreſs it.

Secondly,

Secondly, That there was as great, or rather greater Inconveniencies, which ſprung at firſt from the too great Lenity of theſe natural Princes, for want of Power or Will to puniſh the diſorders of their Subject Children, as have ever ſprung ſince from the Tyranny and Cruelty of the worſt Princes: And I believe, to this was owing that exceſſive Wickedneſs, which forced as it were God Almighty to put an end to the firſt World, by that time it had ſtood about 1600 Years. And we ſee afterwards *Eli* and *Samuel*, good Men, and ſevere Judges towards others, were yet too indulgent to their own Children; which ſhews the weakneſs of your Reaſons, and the greatneſs of the Wiſdom of God, in making all Government to ſpring from *Paternal Power*, which is the mildeſt of all Powers, and to deſcend by degrees to *Hereditary Monarchies*, which are the *Divineſt*, the moſt *Natural*, and the beſt of all Governments, and in which the People have the leaſt Hand.

F. I ſee plainly, that you think the *Laws* of *Nature* or *Reaſon* are not on your ſide, and therefore you are forced to recur not to the expreſs Words of Scripture, but to the Paraphraſe or Explanation of them in our Church Catechiſm, which certainly never was intended to have that conſequence drawn from it which you have made; for though you are pleaſed to omit one part of the Commandment with an *&c.* yet the Words are, as you yourſelf muſt acknowledge, *Honour thy Father, and thy Mother*; and if from *Honour thy Father*, you will gather that all Power was *Originally* in the Father, it will follow by the ſame Argument, that it muſt have been as *Originally* in the Mother too: *Father, and Mother, or Parents*, being mentioned together, in all Precepts in the Old and New Teſtament, where Honour or Obedience is enjoined on Children: And if theſe Words, *Honour thy Father*, muſt give a right to Government, and make the Form alſo Monarchical; and if by theſe Words muſt be meant Obedience to the *Political Power* of the *Supreme Magiſtrate*, it concerns not any Duty we owe to our natural Fathers, who are Subjects; becauſe they, by your Doctrine, are diveſted of all that *Power*, it being placed wholly in the Prince, and ſo being equally Subjects, and Slaves with their Children, can have no Right by that Title to any ſuch Honour or Obedience, as contains in it *Civil Subjection*. But if *Honour thy Father, and thy Mother*, ſignifies the Duty we owe our natural Parents, (as by our Saviour's Interpretation, *Matthew* 15. 4. and in all the other places 'tis plain it doth) then it cannot concern *Political Obedience*, but a Duty that is owing to Perſons who have no Title to Sovereignty, nor any *Political Authority*, as Monarchs over Subjects. For Obedience to a private Father, and that *Civil Obedience* which is due to a Monarch, are quite different, and many times contradictory, and inconſiſtent with each other. And therefore, this Command, which neceſſarily comprehends the Perſons of our natural Fathers and Mothers, muſt mean a Duty we owe them diſtinct from our Obedience to the Magiſtrate, and from which the moſt abſolute Power of Princes cannot abſolve us. And to make this yet plainer, ſuppoſe upon your *Hypotheſis*, that *Seth*, as eldeſt Son of *Adam*, was Heir of all his *Patriarchal Power*, how could all his Brethren and Siſters Honour, that is, Obey *Eve* their Mother, ſuppoſing *Seth*, and *her*, to have commanded them things contradictory at the ſame time?

So, that though I grant the Compilers of our Church Catechiſm did intend in this Explanation to comprehend all the great Duties towards our Governors; yet it is plain, they never dreamed of this far-fetched Inference, that you have drawn from their Explanation of it; for though under this Command of *Honour thy Father, and thy Mother*, they do indeed comprehend Obedience and Honour to be due to the King, *&c.* this no more proves that they believed all *Kingly Power* to be *Paternal*, than that becauſe they likewiſe there infer from this Command, a Submiſſion to be due to all *Governors, Teachers, Spiritual Paſtors, and Maſters*, that therefore all theſe Parties here named do likewiſe derive their Authority from *Adam*'s Fatherhood; or that becauſe under the Command againſt bearing *Falſe Witneſs*, we are taught to refrain our Tongues from *Evil Speaking, Lying, and Slandering*, that therefore all Lies, and Evil Speaking whatſoever, is downright bearing Falſe Witneſs againſt our Neighbour; ſince nothing is more certain, than that a Man may commit either of the former, without being guilty of the latter. And to anſwer your Query, if *Obedience* to Parents be immediately due by a *Natural Law*, and *Subjection* to Princes but by a *Humane Ordinance*, what reaſon is there

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that the *Laws* of *Nature* ſhould give place to thoſe of *Men*? I can eaſily reply, that the *Power* of a Father over his Child gives place and is ſubordinate to the *Supreme Powers*, becauſe they are both ordained ſo by God in the *Law* of *Nature*; it being highly reaſonable, that the good of a private Family ſhould give place to the common good of the Commonwealth, which is a ſufficient reaſon, and extends to all Nations, which never ſo much as heard of the Ten Commandments.

But to come to your Quotation out of *Seneca*, I think this hath a great deal leſs weight in it, than your Argument from the Fifth Commandment: For though this Philoſopher writ to the Emperor, to perſuade him to Clemency; yet this I am ſure of, that he never dreamt of this Notion of *Adam's Sovereignty*, or believed that every Prince was endued with *Paternal Authority*, becauſe amongſt other Titles he was ſtiled *Pater Patriæ*. And therefore what this Author here ſays, is to be looked upon only as a Rhetorical Flouriſh, or, at the moſt, to be underſtood but in a Metaphorical ſenſe; the Arguments of this Author not being to be always taken ſtrictly *as a Logician, but only as an Orator*, who was to make uſe of all Appearances of Reaſon to perſuade a young Prince to Mercy and Clemency; and yet all this was not ſufficient, as *Seneca* himſelf found, before he died, by woful Experience. And *Seneca* very well knew, that *Tully* was ſtiled *Pater Patriæ* by the Senate, though he was never endued with your *Imperial* or *Paternal Authority*.

But to reply a little to your Anſwer againſt my laſt Argument, that Princes not being our *Natural Fathers*, muſt often want that *Natural* and *Fatherly Affection* towards their Subjects, and therefore may *tyrannize* over them; I think the firſt part of your Reply will make nothing in confutation of what I have ſaid: For though I will not deny but God, *who hath the Hearts of Princes in his Hands*, may ſometimes endue them with ſuch Affections as he thinks fit, not only towards the People in general, but towards each particular Perſon; yet this may be as well evil as good Affections: As God is ſaid in *Judg. 9. to have ſent an evil Spirit between Abimelech*, (one of your uſurping Monarchs) *and the Men of Shechem*, his Subjects: And therefore God may as well ſend the one for the puniſhment, as the other for the benefit of a Nation: And that God is more likely to incline the Hearts of Princes to ſuch evil, than good Affections towards their Subjects, may appear from Mankind's more often deſerving God's Anger, for their evil Deeds, than Favours for their good ones.

And I deſire you would ſhew me in how many *Abſolute Monarchies* now in the World, God Almighty is pleaſed to declare this wonderful Operation of theſe *Fatherly Affections* towards their People. I pray deal ingenuouſly, and tell me, is it to be found in our *European Monarchies*, where moſt Princes do not only miſerably harraſs and oppreſs their Subjects, by intolerable Taxes, and ſtanding Armies, till they reduce them to the loweſt condition of Beggary and Deſperation; and where, for the leaſt differences in Religion, they take away their Subjects Lives by that cruel Tribunal of the Inquiſition, without any fair or legal Trial; or elſe, where, notwithſtanding all Edicts, Oaths, and Vows to the contrary, they ſeize upon, and ſpoil their Subjects of their Eſtates, and impriſon and torment their Perſons by thoſe booted Apoſtles the *Dragoons*; becauſe Faith is not to be kept with Hereticks; or elſe, in another Country, where the Prince took upon him a Prerogative to diſpenſe with all Laws at his pleaſure, and to impriſon, and turn Men out of their Freeholds, contrary to the known Laws of the Kingdom? Or, to conclude, muſt we look for theſe *Divine Operations* amongſt the *Eaſtern Monarchs*, where they treat their Subjects like Slaves, and allow them no Property either in Lands, or Goods, farther than they think fit, and to have their Perſons and Lives wholly at their Mercy, to be caſtrated, made Slaves of, or killed, as often as it ſhall pleaſe their Humour or Paſſion? And I doubt, if you will but read Antient as well as Modern Hiſtories, and alſo ſurvey the State of Mankind in all the *Abſolute Monarchies* between *France* and *Japan*; you will find more frequently Examples of the evil, than good Affections of theſe your Artificial Fathers towards their Adopted Children.

M. I cannot deny, but you have given a very Tragical Account of the *Tyranny* and *Oppreſſions* under divers *Abſolute Monarchies* now in the World; yet this is not the fault of the Government, but of the evil Principles, bad Education, or Tempers of thoſe Monarchs; as alſo, oftentimes from the unquiet and rebel-

B.C.P. § 3. lious Diſpoſition of their Subjects, from the diſtruſting of which, they place all their Security in ſtanding Armies, and Guards; ſo that I muſt grant, that all thoſe Governments that are maintained by Armies too ſtrong for the Subjects in general, are uneaſy, and degenerate into *Deſpotick Monarchies*, and are unſafe both to the Prince and People. And to let you ſee, that it is not my intention to

F.P. § 6. maintain or defend *Oppreſſion* or *Tyranny*, I muſt freely aſſert, with Sir *R. F.* (whoſe Principles I here take upon me to maintain) that all Princes are bound to treat their Subjects as their Children, and that it is contrary to the Nature of Mankind, to make their Offspring Slaves; and that all Kings, (nay Conquerors too) are bound to preſerve the Lands, Goods, Liberties, and Lives of all their Subjects, not by any *Municipal Law*, but by the *Natural Law* of a Father, which binds them to ratify the Acts of their Forefathers and Predeceſſors in things neceſſary for the publick good of their Subjects: But yet you have not done fairly, not to take notice of the great Oppreſſions that are exerciſed in ſome *Commonwealths* likewiſe towards their Subjects, which if you would pleaſe to conſider, and weigh the fewneſs of theſe againſt the great number of Monarchies now in the World, I believe you will have good cauſe to confeſs, that there are many

B. P. P. § 12, 13. more *good Monarchs*, than *equal Commonwealths*. And I do believe there was as much *Tyranny* exerciſed in theſe three Kingdoms during our late *Civil Wars*, and afterwards under the Government of the *Rump* and *Cromwell*, till the Return of the late King *Charles*, as in all the *Abſolute Monarchies* between *France* and *China*, or from the *North* to the *South Pole*. And it is very remarkable, that when *Oliver Cromwell* ſet up the moſt *Abſolute* and *Tyrannical Government* that ever was in this Iſland, there was yet no noiſe of any Fears or Jealouſies of it in all his Times.

E. I am very well pleaſed to find you ſo heartily agree with me, in condemning of Tyranny and Oppreſſion in *all ſorts* of Governments whatever. And I do aſſure you, I do as little approve of it, if it be any where exerciſed in *Commonwealths*, as you can do in *Monarchies*: Only I muſt needs tell you, I am not at all of your Opinion, that the Oppreſſions or Abuſes, committed by the Magiſtrates in *Commonwealths*, are to be compared with the Tyrannies, and Cruelties exerciſed by *Abſolute Monarchs*, and their Subordinate Miniſters. For though I grant they often lay very ſevere Taxes and Impoſitions upon their Subjects, eſpecially ſuch as they have acquired by Conqueſt, and ſo act like *Abſolute Monarchs* over them, yet are theſe Oppreſſions not at all to be compared to thoſe under *Arbitrary Monarchies*; for though perhaps divers *Commonwealths* may impoſe greater Taxes upon their Subjects than ſome Neighbouring Monarchs; yet doth it not follow, that their Government is more ſevere for all that; ſince the People having an opportunity by free Trade, and Liberty of Conſcience in ſuch *Commonwealths*, to acquire a greater ſhare of Riches, are alſo thereby enabled to contribute more to the maintainance of the Government, by which they reap ſo great Benefits. Thus we ſee a Citizen of *Amſterdam* is able to pay ſix times the Taxes of one of *Antwerp*: And therefore I dare, for all that, appeal to any common Subject (though a Papiſt) of the *United Provinces*, whether he had not rather live under the States of *Holland*, than under the *French* King; or to any Subject of the *Commonwealths* of *Venice*, *Genoa*, or *Lucca*, whether he doth not prefer his Condition, as bad as it is, to that of any of the Subjects of the Pope, Duke of *Florence*, or any other *Italian* Prince; not to go over into *Turkey*, and thoſe other *Eaſtern Monarchies*, where the Yoke of Slavery lies yet more heavy upon the Subjects than in *Europe*.

And as for what you ſay, in the comparing of thoſe *Illegal Arbitrary Proceedings*, that were exerciſed in *England*, during the late *Civil Wars*, and afterwards, till the King's Coming in, I muſt beg your pardon, if (beſides the great Hyperbole in your Expreſſions on that occaſion, which I am ſure are very far from Truth) I impute thoſe Miſcarriages, not as the fault of this or that ſort of Government, but rather to a *powerful Faction*, back'd by a *ſtanding Army*, which was more like a Tyranny, or corrupt Oligarchy, than any ſettled Government. Nor is what you ſay concerning *Oliver*'s Government more true than the former; for all Men, except his own Faction, were not only afraid, but really ſenſible of the loſs of their Liberties under his Tyrannical Uſurpation: Though indeed, there was a very good reaſon, why there ſhould be fewer Fears or Jealouſies of it, than in his late Majeſty's Time, when his Government began to grow uneaſy through the Peo-

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ples Fear of Popery and Arbitrary Government, which they had no jealousy of in *Cromwell's* Time; and as for the latter, they had no occasion to fear that which had already happened.

But that you may not mistake me for a *Commonwealths* Man, I must so far agree with you, that to condemn Monarchy as such, were to repine at the Government of God himself; so that I also grant, that the fault lies not in the Form of Government, but in the frail Nature of Men, which can rarely administer that great Trust committed unto them, as becomes what they take upon them to be, *God's Vicegerents upon Earth*: And I must own, that I esteem *Monarchy limited by known Laws, as the best and most equal Government in the World*; and under which both Prince and People may live most happily and easily, if each of them will be but contented with their due share.

But I beg your pardon for this Digression; and to come to a Conclusion, I must freely tell you, it is not a Straw matter, what your's or Sir *R. F.*'s Principles are concerning the Fatherly Power of Princes; for as long as there is no ground for it in Scripture or Nature, you cannot expect that either Princes or People will ever believe you. Neither is it true, that Princes as Fathers are bound to treat their Subjects in all things like their Children, for then Princes ought to maintain their Subjects, and not Subjects their Princes; since it is the Apostle's Rule, *That Children ought not to lay up for their Parents, but the Parents for the Children*: And though you pretend not to plead for Tyranny or Arbitrary Government, yet I cannot at all understand, why if it were not for this End, you should assert not long since, in your answer to me, that God thought fit to change *Paternal Government* into *Hereditary Monarchy*, because of the excessive Wickedness of Mankind before the Flood, proceeding from the too great Lenity of those *Patriarchal Princes*, in not punishing the disorders of their Subject Children; which is a very bold Assertion, since you know no more than I, what that Wickedness was in particular, for which God drowned the World, much less what was the occasion of it. And therefore, if God thought fit to change *Paternal Power* into *Hereditary Monarchies*, which (as I have proved) do not at all proceed from *Paternal Power*, it will also follow that the Government of your Patriarchs was not sufficient for the well being and happiness of Mankind, or else God would never have thought fit to have altered it for a more cruel and severe way of Government. 2 *Cor.* 12. 14.

But as for what you say concerning those Princes that place all their Security in Guards and Armies too strong for the Subjects, that they are uneasy, and degenerate into *Despotick Monarchies*, (you might better have said Tyrannies) and that they are unsafe both for Prince and People, is very true, and I altogether agree with you in it. But those of your Principles have no reason to find fault with Princes for so doing; for since they do but use their just Prerogative over their Slaves or Vassals, it is but fit that they should be made to undergo that Yoke, whether they will or no, which they would not bear willingly: And as long as Princes look upon themselves to be (what they really are upon your Principles) the Masters, and not the Fathers of their People, as they suppose the Goods and Estates of their Subjects to be wholly at their Disposal, so can they never command them as they please, without the Assistance of *Standing Armies*. Nor have you any reason to complain of those Princes for keeping them too strong for the Subjects to oppose; since, upon your Principles, be they strong or weak, the Subjects are not to resist them. But if Princes, without your extraordinary fondness of using their People like Children, would but always use them like Subjects, with ordinary Justice and Moderation; and not oppress them with excessive Taxes, and unnecessary *Penal Laws* about Religion, you would find there would be no need of *Standing Armies* to keep the People in awe, who would themselves be the best defence not only against Domestick, but Foreign Enemies. And this I'll assure you is a much better Receipt against *Rebellion*, than all your new *Recipe's* of *Paternal Power* in Monarchs, which is not only without all ground of Reason, but above common Apprehensions.

M. You have made a long Speech in answer to my *Hypothesis*, which since you are not satisfied with, I can likewise shew you another very good reason, why the People should love and reverence their Princes; and that is, those great *Liberties* and *Concessions* that all the Monarchs of *Europe* have granted their Subjects, which

which are now pass'd into the settled Laws and Customs of those Kingdoms, with which the People ought to be very well contented. Nor ought they to rebel or resist, though they may sometimes out of wantonness and necessity infringe, or intrench upon those Privileges, which they or their Ancestors have conferred upon them; since they can *never forfeit* that Power they have *originally* over them.

F. I do not very well understand what you mean; for I have hitherto supposed that all Subjects have a Property in their Estates, and a Freedom for their Persons by the *Laws of Nature*; and which no *Civil Power* whatever could deprive them of without their *Consent*: And therefore I desire you would shew me, that if Children, Subjects, and Slaves, were all one at the first, how we in this side of the World came to be in a better condition than those in *Asia* and *Africa*? Or that we *Englishmen* can claim a Property in our Estates, and a Right to our Lives, which the Prince cannot take away, but according to some known Laws?

M. I think I can easily do this, not only in relation to *England*, but any other Kingdom, which is now governed by known Laws, and that upon Sir *R. F.*'s *Hypothesis*; which I shall do (as near as I can remember) in the Words of that excellent Person the late Earl of *Clarendon*, in his Survey of Mr. *Hobbs*'s *Leviathan*; who supposes, according to this *Hypothesis*, *That some one of* Noah's *Descendants was an* Absolute Monarch *at first over all his Posterity, which might continue in his Line for some Ages, till at last their Relation by Blood to their Subjects was removed at so great a distance, that the Account of their Kindred or Relation to each other was scarce remember'd; whereby they who had the* Sovereign Power, *still express less* Paternal Affection *in their Government, looking upon those they governed as meer Subjects, and not as their Kinsmen or Allies; till by degrees, according to the Custom of* Exorbitant Power, *they (considering only the extent of their own Jurisdiction, and what they might, rather than what they should do) treated them who were under them, not as Subjects, but as Slaves; who having no Right to any thing but what they permitted them, they would allow them to possess nothing, but what they had no occasion to take away. Estates they had none that they could call their own, because when their Prince called for them, they were his. Their Persons were at his Command, when he had either occasion or appetite to make use of them; and their Children inherited nothing but their Father's Subjection; so that they were happy or miserable, as he who had the Power over them, pleased to exercise it with more or less Rigour or Indulgence; yet they submitted alike to both, acknowledging his Dominion to be naturally as absolute as their Subjection and Obedience.*

Chap. 20. pag. 69, 70.

These Princes might for some Ages have pleased themselves with this Exorbitant Exercise of their Power, which though it had been always the same, yet the Exercise of it had been very moderate, whilst there remained the Tenderness or Memory of any Relation. But these Princes began at last to discern, and be convinced, that the great strength they seemed to be possest of, would in a short time degenerate into weakness, and the Riches they seemed to enjoy, would end in want and necessity, as well in themselves, as in their Subjects; since no Man would build a good House, that his Children could not inherit, nor cultivate their Land with any good Husbandry and Expence, since the profit thereof might be given to another Man: And that if the Subjects did not enjoy the Conveniencies of Life, they could not be sure of their Help and Affection, whenever they should have War with another Prince as absolute as themselves; but they would rather chuse to be subject to him, under whose Government they might live with greater Liberty and Satisfaction. And lastly, that if they ingross'd all the Wealth and Power into their own Hands, they should find none who would defend them in the Possession of it: And that there was a great difference between that Subjection which Love and Duty pays, and that which results only from Fear and Force; since Despair often puts an end to that Duty, which Reason, and it may be Conscience, would otherwise have persuaded them still to continue: And therefore, that it was necessary that their Subjects should find ease and profit in Obeying, as well as Kings pleasure in Commanding. These wise and wholesome Reflections might prevail with Princes, for their own, as well as Subjects benefit, to restrain their Power, and to make it less absolute, that it might be more useful; and to give their Subjects such a Property in their Goods, and Lands, as should not be invaded, but in such cases, and on such occasions, as the necessities of the Government really required. But as they found the benefit arising from these Condescensions highly tend to the Improvement of the Riches, and Civility of their Subjects, with all those Additions of Pleasure and Industry which render Man's Life, as well as the Government easy and pleasant, they still in several Generations enlarged these Graces and Concessions to their Subjects, yet reserving all in themselves that they did not

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part with by their voluntary Grants or Conceſſions. And if we take a view of the ſeveral Kingdoms *of the World, we ſhall ſee another face of things, both of* Power, *and* Riches, *in thoſe Governments where theſe Condeſcenſions and Conceſſions have been beſt obſerved, than in thoſe Kingdoms where the Sovereigns either retain, or reſume to themſelves all thoſe Rights, or Prerogatives, which are inveſted in them from the* Original Nature *of Government; ſo that there ſtill remains enough in the Princes Hands to be made uſe of for the preſervation of his own Power, and the defence of his Subjects, for whoſe benefit it was intruſted with him by God.* So far the late Great Chancellor.

And theſe Privileges and Condeſcenſions being once paſs'd into conſtant and ſtanding Laws by the Princes that gave them, and alſo ſolemnly ſworn to by their Coronation Oaths, do for the future bind not only thoſe Princes that granted them, but alſo their Succeſſors, to their obſervation: And I then look upon them bound, under pain of Damnation, not to break or infringe them, without very great neceſſity.

But however, if they ſhall happen ſo to do, ſince they were Matters of meer Grace and Favour at the firſt, and not of Right, the Princes that thus tranſgreſs them are only accountable to God, and puniſhable by him, and not by their Subjects, for any Breaches or Infringements of ſuch Liberties and Immunities: And this may ſerve againſt the Fancies of all thoſe, who think Princes have nothing but what the People have given them; and likewiſe againſt ſuch as Mr. *Hobbs*, who maintain ſo much is conferred on them, that they have a Right to leave no body elſe any thing to enjoy, that they have a mind to take from them. And this I take to be a much better Security for the Peoples Liberties, to leave it to the Honour and Conſcience of their Princes, and that Fear they ought to have of the Divine Vengeance, in caſe they oppreſs their Subjects contrary to Law, than your heady and violent Methods of Reſiſtance for the Oppreſſion or Tyranny of Princes, which would but give the common People a Pretence of taking Arms, and rebelling againſt their Princes upon every ſlight Provocation.

F. You have made a very plauſible Diſcourſe, whether of your own, or from the Author you quote, is not much material; for, I doubt, when it comes to be examined, it will appear much more like a Romance than a true Hiſtory: And therefore, granting at preſent your Principles to be true (tho' they are not) I deſire you to ſhew me, how you can make it out, either from ſacred or prophane Hiſtory, that any *Limited Kingdom* now in the World ever had its *Original* from thoſe gracious Condeſcenſions, or Conceſſions of Princes, as you here mention: For by all that ever I can read or obſerve, either from our own or foreign Hiſtory, all the Liberties and Privileges, which Subjects enjoy at this day, proceeded at firſt either from the original Contracts, Cuſtoms, or Conſtitutions of thoſe Kingdoms or Nations, at the *firſt Inſtitution* of their Government; or elſe were forced from Princes by their Subjects, who would no longer endure the Severity of their Yoke; or elſe were granted by ſome of them, who believing they had *worſe Titles* than their Competitors to the Crown, were willing to engage the *People* to their ſide, by granting them *greater Privileges* than they before enjoyed.

And tho' I grant, the Reflections you make upon the Exerciſe of arbitrary Power, and the Miſeries it brings both upon the Prince and People, are very true; yet I am ſure the Practice of moſt abſolute Monarchs throughout the whole World hath run quite contrary to your Suppoſitions. For Princes are ſo far (by what I ever read or obſerved) from being willing to *part* with any of their Power, that they have ſtill endeavoured by degrees to enlarge it, and render it *more abſolute* than it was left them; as you may obſerve in the Government of *France*, *Spain*, *Denmark*, and *Sweden*, in this laſt Age; and what *Encroachments* were made in this Kingdom, by the Prerogative, upon the Peoples Liberties, during the Reigns of our laſt Princes, he is a Stranger to the Hiſtory of the Country, that hath not read of, if he do not remember them; and how much higher they would have been carried, if this ſtrange and ſudden Revolution had not put a ſtop to it, I had rather you and I ſhould underſtand in Idea than by Experience.

But if ſuch grave Reflections as theſe of yours were able to work upon the firſt Monarchs, I deſire to know the reaſon why thoſe of *Turkey*, *Perſia*, *Ruſſia*, and the *African* Emperors of *Morocco*, and of the *Abiſſines* (who ſure have been as wiſe as any you can name) ſhould not, in ſo many Ages as they have governed, ſee theſe Inconveniences you mention, and reſtrain their exorbitant Power within ſome moderate Limits: Nay, to the contrary, one of the moſt ambitious and

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aſpiring Monarchs in *Europe* is making what haſte he can to reduce his Kingdom into the ſame Model. And what, do you think, would the Princes and Counſellors of theſe Empires ſay to ſuch a one as you or I, who ſhould offer to preach this ſtrange Doctrine to them, that they ought under pain of Damnation to uſe their Subjects as their Children, and not as Slaves or meer Vaſſals? I doubt they would make us pay dear for publiſhing ſuch falſe Doctrine in their Dominions, or at leaſt would deſpiſe us for half-witted Fellows, without any true Notions in Politicks; ſince they believe, that the true Security and Glory of a King conſiſt in vaſt Standing Armies, great Fleets, and a Power to take from their Subjects and Neighbours whatever they pleaſe, thereby to enjoy their own Pleaſures and Humours in all their Hearts can deſire, and to extend their Empires (*per fas & nefas*) as far as ever their conquering Swords will give them leave. And if you ſhould tell them, that their Subjects could not love them, nor live happily nor contentedly under ſuch a Government; I ſuppoſe their Anſwer would be (if they could ſpeak *Latin*) *Oderint dum metuant*; or, in the Language of their own Country, that they would rather truſt a Standing Army than the Affections of their People; and that it is better to take from their Subjects what they have a mind to, than to leave it to their Good-will what they will give them. Theſe are all the antient and modern Politicks that I can obſerve in moſt abſolute Monarchies, or in thoſe Kingdoms where Kings have taken upon them ſo to govern their Subjects at this day: But I defy you to ſhew me any one Kingdom in the World, where the People owe all their Liberties and Privileges meerly to the Good-will and Favour of their Princes, who granted them only out of thoſe wiſe Conſiderations you have now mentioned.

But as for the Expedient at the latter end of your Speech, that theſe Privileges and Condeſcenſions, when once granted by Kings to their Subjects, and paſs'd into conſtant and ſtanding Laws, and alſo ſolemnly ſworn to by Princes at their Coronation, do not only bind thoſe Princes that granted them, but alſo their Succeſſors, under pain of Damnation; I ſo far agree with you, tho' I muſt beg your Pardon, if I cannot think this a ſufficient Security, for ſeveral Reaſons I can give you at a more convenient Time, when I ſhall, when you pleaſe, more fully diſcuſs this Point.

M. I muſt freely tell you, Sir, I am not yet ſatisfied neither with the Inſtances you have brought, nor yet with your Replies to my Anſwers; and I think I can ſhew you, as to this Kingdom, that they are falſe in Matter of Fact. For if that the firſt and moſt antient Kingdoms and Monarchies began by *Conqueſt* at firſt, and that perhaps for the moſt part by Wars unjuſtly made, as I may alſo inſtance in *England*, if this were a proper Seaſon for it; ſo that indeed the greateſt Liberty in the World (if it be duly conſidered) is for a People to live under a *Paternal Monarchy*. It is the *Magna Charta* of this Kingdom, all other Shews or Pretexts of Liberty are but ſeveral Degrees of Slavery, and a Liberty only to deſtroy Liberty.

B. P. P. So that I think I may very well keep my firſt Opinion, that *Paternal Government* is the *Foundation* of all other; and I have ever thought God's Love and Kindneſs to Mankind did never appear in any thing more (except in Man's Redemption) than in creating only one Man, and out of him only one Woman: So that *Adam* was a kind of a Father to his Wife, that Marital, as well as all other Power, might be founded in *Paternal Juriſdiction*; that all Princes might look upon the meaneſt of their Subjects as their Children, and all Subjects upon their Prince as their common Father, and upon each other as the Children of one Man; that Mankind might not only be united in one common Nature, but alſo be of one Blood, of one Family, and be habituated to the beſt of Governments from the very Infancy of the World.

Were this well conſidered, as there could be no *Tyrants*, ſo neither would there be any Traitors and Rebels; but both Prince and People would ſtrive to outdo each other in the Offices of Love and Duty. And now do you or any Man living read Sir *R. F.*'s *Patriarcha*, or other Works, and ſee if either he or I have aſcribed one Dram of Power to Princes, which will not naturally ſpring from this *Supreme Paternal Power*.

So that upon the whole, I think Reaſon it ſelf would conclude, that this way of ſolving the *firſt Riſe* of Government is true, and that it is the Duty of all, who by the Bleſſing of God are under *Paternal Monarchies*, to be very thankful for the Favour, and to do the utmoſt that in them lies to preſerve and tranſmit that beſt

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Form of Government to their Children after them. And ſurely there is no Nation under Heaven hath more Reaſon for this than the *Engliſh*, who are under a *Paternal Monarchy*, which has taken the beſt care that can be to ſecure them, not only from Oppreſſion and Wrong, but from the very Fear of it.

F. Since you lay the chief ſtreſs of your Aſſertion upon the Original of moſt of the Kingdoms and Monarchies now in the World, and of our own in particular, I think I may ſafely join iſſue with you on both points, and in the firſt place affirm, that an *unjuſt Conqueſt* gives the Conqueror no Right to the Subjects Obedience, much leſs over their Lives or Eſtates; and if our *Norman William* and his Succeſſors had no more Right to the Crown of *England* than meer Conqueſt, I doubt whether they might have been driven out after the ſame manner they came in: But I believe you will find, upon ſecond thoughts, that unjuſt Conqueſts and Uſurpations of Crowns be no firm Titles for Princes to relie on; leſt the old *Engliſh* Proverb be turned upon you, *viz. That which is Sauce for a Gooſe is Sauce for a Gander.* But I ſhall defer this Diſcourſe concerning Titles by Conqueſt, and in particular that of our Kings to this Kingdom, to ſome other time; when I doubt not but to ſhew, that it is not only falſe in Matter of Fact, but alſo that it will not prove that for which it is brought.

And therefore what you ſay in your Concluſion, in exaltation of God's Love and Kindneſs to Mankind, in creating one Man, and out of him only one Woman, that *Adam* might be a kind of Father to his Wife, is a very pretty and indeed ſingular Notion; and you would do very well to move the *Convocation*, next time it ſits, that this Explanation may be added to the *fifth Commandment*, that Women may be taught in the Catechiſm, that Obedience to Husbands is due by the Precept of *Honour thy Father and thy Mother.*

And therefore I need give no other Anſwer to all the reſt you have ſaid: For however ſpecious the *Hypotheſis* may ſeem (as you have dreſs'd it up) for Princes and People; yet till you have proved, that all *Paternal Power* is Monarchical, and that all *Monarchical Power* is derived from Fatherhood, it ſignifies nothing.

Nor can theſe *piæ Fraudes* do any more good in Politicks than Religion: For as Superſtition can never ſerve to advance the true Worſhip of God, but by creating falſe Notions of the *Divine Nature* in Mens Minds, which doth not render it, as it ought to be, the Object of their Love and Reverence, but ſervile Fear; ſo I ſuppoſe this aſſerting of ſuch an unlimited *deſpotical Power* in all Monarchs, and ſuch an entire Subjection as Sir *R. F.* and you your ſelf exact from Subjects, can produce nothing but a ſlaviſh Dread, without that Eſteem and Affection for their Prince's Perſon and Government, which is ſo neceſſary for the Quiet of Princes, and which they may always have, whilſt they think themſelves obliged in Conſcience and Honour to protect their Lives and Fortunes from Slavery and Oppreſſion, according to the juſt and known Laws of the Kingdom, and not to diſpenſe with them in great and eſſential Points, without the Conſent of thoſe who have a hand in the making of them: And all falſe Notions of this *Supreme Power*, as derived from I know not what *Fatherly* (but indeed *Deſpotick*) *Power*, are ſo far from ſettling in Peoples Minds a ſober and rational Obedience to Government, that they rather make them deſperate, and careleſs who is their Maſter; ſince, let what Change will come, they can expect no better than to be Slaves.

Nor are Subjects put in a better condition by this Doctrine of *abſolute Non-reſiſtance*, ſince all Princes are not of ſo generous a nature, as not to tyrannize and inſult the more over thoſe, whom they ſuppoſe will not, or elſe dare not reſiſt them; and therefore I cannot ſee how ſuch a Submiſſion can ſoften the Hearts of the moſt cruel Princes in the World, as you ſuppoſe; much leſs how a Power to reſiſt in ſome caſes can enrage the mildeſt Princes to their Peoples Ruin; ſince all Reſiſtance of ſuch mild and merciful Princes I grant to be utterly unlawful: Nor do I hold Reſiſtance ever to be practiſed, but where the People are already ruined in their Liberties and Fortunes, or are juſt at the brink of it, and have no other Means leſt but that to avoid it.

To conclude, I ſo far agree with you, that I think it is the Duty of all that are born under a Kingly Government *limited by Laws*, to be very thankful to God for the Favour, and to do the utmoſt that in them lies to preſerve and tranſmit this beſt Form of Government to their Children after them, without maintaining ſuch unintelligible Fictions as a *Paternal Monarchy* derived from *Adam* or *Noah*. And tho' I own that ſome of our former Kings have taken the beſt care they could

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to ſecure this Nation from *Popery* and *Arbitrary Power*; yet whether the Method of our three laſt Kings has been the readieſt way to ſecure us from the Fears of it, I leave it to your own Conſcience (if you are a Proteſtant) to judge.

But ſince you defy me to ſhew you out of Sir *R. F.*'s *Patriarcha*, that he hath aſcribed one Dram of Power to Princes, which doth not naturally ariſe from a *Supreme Paternal Power*, and that this is no exorbitant Height; I think I am able to prove from many Paſſages in his *Patriarcha*, as well as other Works, that no Author hath made bolder Aſſertions to render all Mankind *Slaves*, inſtead of Subjects; and all Princes *Tyrants*, inſtead of Kings; and that his Principles are ſo far from being ſafe, that if they are duly look'd into and weighed, they will prove deſtructive as well to the Rights of Princes, as to the Liberties of the People.

M. I ſhould be very glad to ſee that proved; for I muſt always believe, 'till you ſhew me to the contrary, that this excellent Author lays it down for a Ground, that Princes, being as Fathers to their People, are bound to treat their Subjects as Children, and not as Slaves: And therefore waving this laſt Controverſy, which we have argued as far as it will go; pray make out what you ſay from his own Words, and I will give up the Cauſe.

F. I wonder how you can be ſo partially blind as not to ſee this, ſince you yourſelf have already made uſe not only of a great deal of his Doctrines, but alſo of his very Words. And therefore, pray ſee his Obedience to Government in doubtful Times; as alſo in his Preface to the Obſervations upon *Ariſtotle*'s Po-
Page 4. liticks; where you will find he aſſerts, *That* Adam *was the Father, King and Lord over his Family; a Son, a Subject, and a Servant, or a Slave, were one and the ſame thing at firſt: The Father had power to diſpoſe of, or ſell his Children, or Servants.* "Whence we find, that at the firſt reckoning of Goods in Scripture, the Man-"ſervant, and the Maid-ſervant are number'd among the Poſſeſſions, and Sub-"ſtance of the Owner, as other Goods were." So that then, if the Power of a Father, and of a Monarch be all one, and that all *Monarchical Power* is *Deſpotical*, the Conſequence is alſo as evident, that all Subjects are alſo naturally Slaves, unleſs their Princes ſhall pleaſe to lay an eaſier Yoke upon them.

M. Perhaps Sir *R. F.* may have carried this Matter a little too far; yet if you pleaſe to look into his *Patriarcha*, *Chap.* 3. *Part* 1. you will find that he hath this Paſſage, which plainly ſpeaks the contrary: *The Father of a Family governs by no other Law, than by his own Will, not by the Laws and Wills of his Sons and Servants. There is no Nation that allows Children any Action, or Remedy, for being unjuſtly governed; and yet for all this, every Father is bound by the Law of Nature to do his beſt for the preſervation of his Family; but much more is a King always tied by the ſame Law of Nature to keep this general Ground, That the Safety of his Kingdom be his chief Law.* Whence you may obſerve, that though he takes away all Remedy from Children againſt their Parents for being ill governed, yet doth he not ſet the Father free from all Obligation to preſerve the Good of his Family, of which ſure a Man's Children are a principal part.

And if you pleaſe to look back to the ſecond Chapter of his *Patriarcha*, you will find theſe Words: *To anſwer in particular to the firſt Text, it may be ſaid the Senſe of theſe Words, By the Law of Nature all Men are born free, muſt needs mean a Freedom only that is oppoſite to ſuch a Subjection as is between Father and Son. This is made manifeſt by the Text of the Law: For* Ulpian *in this place ſpeaketh only of* Manumiſſion, *which is a ſetting at Liberty of Servants from Servitude, and not of* Emancipation, *which is the freeing of Children from the Fathers Tuition. Servitude, as the Law teacheth, is a Conſtitution of the Law of Nations, by which a Man is ſubject to the Dominion of any other Man againſt Nature. So not every Subjection is Servitude, but Subjection contrary to the Law of Nature. Yet every Man is born ſubject to the Power of a Father.* This the Law itſelf ſaith, *In Poteſtate noſtra Liberi noſtri ſunt. So that you ſee here he maketh a difference between Servitude, and that Subjection that is due to Fathers.*

F. Give me leave to anſwer theſe two Inſtances before you proceed any farther; and I ſhall in the firſt place make bold to anſwer your laſt Inſtance firſt, becauſe I ſhall be much ſhorter upon it. But pray take notice by the way, that this Author is very high and rigorous for the *abſolute Power* of Life and Death in all Fathers over their Children in the State of Nature, and that they may exerciſe it for very ſlight Offences; And therefore in this Chapter you have laſt quoted, he ſeems very well ſatisfied with the Example of *Caſſius*, *who threw his*

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Son out of the Conſiſtory for publiſhing the Agrarian Law, *for the Diviſion of Lands*; and I think this was no ſuch great Crime, for which a Father might juſtifie the putting his Son to Death. And in the Section before this, he juſtifieth the Power of Fathers amongſt the *Romans, as being ratified and amplified by the Laws of the twelve Tables, enabling Parents to ſell their Children two or three times over.* So that theſe things conſidered, I cannot ſee how this Diſtinction of Sir *R. F.* out of the *Civil Law* will do him any ſervice. For though I grant indeed, that *Manumiſſion*, and *Emancipation*, are two different Words, yet do they both ſignifie the ſame thing. And though for the greater reſpect which they would ſhew to the Condition of Children above that of Slaves, they were pleaſed to make uſe of different Expreſſions; yet whoever will look more cloſely into the Nature of the Subjection that Children were in, under their Parents, by the *Roman* Law, will find, that the Condition of Children was no better than that of Slaves. For *Firſt*, The Father had ſuch an *abſolute Power* over the Perſon of the Son, that he could ſell him three times, whereas he could ſell a Slave but once. *Secondly*, He had ſuch an *abſolute Power* over his Life, that he could take it away whenever he pleaſed. *Laſtly*, A Son could have no Property in any Goods without his *Father's Conſent*, 'till he was emancipated, or made free: So that if his Father were harſh and ill-natured, the Condition of a Son was worſe than that of a Slave, as long as his Father lived.

And therefore, I am ſtill of the Opinion of the antient Civil Lawyers, who aſſert the natural Freedom of Mankind, according to the Maxim you have now cited. And they acknowledge, that the *Servitude*, or *abſolute Subjection of Children to their Fathers*, was not by the *Law of Nature*, but by the *Civil* or *Roman Law*, peculiar to themſelves, as I have already proved at our laſt Meeting.

But to come to your firſt Quotation, whereby you would clear Sir *R. F.* from maintaining any unjuſt Severity in Fathers, or Tyranny in Princes, becauſe they are both to endeavour the common Good of their Families and Kingdoms. 'Tis very true he ſays ſo; but of this *Common Good* they themſelves are the *ſole Judges*. So that if the Father pleaſe to ſell one or two of his Chileren, whom he leaſt loveth, to provide Portions for the reſt, he may lawfully do it for any thing I ſee to the contrary. So likewiſe immediately after he aſſerts the Superiority of all Princes above Laws, becauſe there were Kings long before there were any Laws. And all the next Paragraph is wholly ſpent in proving the *unlimited Juriſdiction of Kings above Laws*; as it is deſcribed by *Samuel*, when the *Iſraelites* deſired a King: So that it ſignifies little what Laws Princes make, or what Privileges they grant their Subjects, ſince they may alter them, or abrogate them whenever they pleaſe.

M. But pray take along with you what he ſays in the next Paragraph you quote; where you may ſee theſe Words; *It is there evidently ſhewed, that the Scope of* Samuel *was to teach the People a dutiful Obedience to their King, even in thoſe things which themſelves did eſteem miſchievous and inconvenient: For by telling them what a King would do, he indeed inſtructs them what a Subject muſt ſuffer; yet not ſo, as that it is right for Kings to do injury, but it is right for them to go unpuniſhed by the People if they do it. So that in this point it is all one, whether* Samuel *deſcribe a King or a Tyrant; for patient Obedience is due to both: No Remedy in the Text againſt Tyrants, but in crying and praying unto God in that Day.* And that Sir *R. F.* is very far from juſtifying Kings in the unneceſſary Breach of their Laws, may farther appear by what he ſays, *cap. 3. part 6.* of this Treatiſe; where pray ſee this Paſſage. *Now albeit Kings who make the Laws, be (as King* James *teacheth us) above the Laws, yet will they rule their Subjects by the Laws; and a King governing in a* ſettled Kingdom, *leaves to be a King, and degenerateth into a Tyrant, ſo ſoon as he leaves to rule according to his Laws; yet where he ſees the Laws rigorous, or doubtful, he may mitigate and interpret them.* So that you ſee here he leaves the King no Power or Prerogative above the Laws, but what ſhall be directed, and employed for the general Good of the Kingdom.

F. But pray, Sir, read on a little farther, and ſee if he doth not again undo all that he hath before ſo ſpeciouſly laid down; and if you will not read it, I will: *General Laws made in Parliament, may, upon known reſpects to the King, by his* Authority, *be mitigated, or ſuſpended upon Cauſes only known to him. And although a King do frame all his Actions to be according to the Laws, yet he is not bound thereto, but at his good Will, and for good Example: Or ſo far forth as the General Law of the Safety of*

the Commonweal doth naturally bind him; for in such sort only, positive Laws may be said to bind the King, not by being positive, but as they are naturally the best, or only means for the preservation of the Commonwealth.

So that if the King have this Prerogative of mitigating, interpreting, and suspending all Laws, in Cases only known to himself, and that he is not bound to the Laws but at his own good Will, and for good Example. I desire to know what *greater Prerogative* a King can desire, than to *suspend* the Execution of any Law, as often as he shall think fit. For though I grant the *Suspension* of a Law differs from the *Abrogation* of it, because the former only takes away the force of it in this or that particular case, whereas the latter wholly annuls the Law; yet if this Suspension be general, and in every case, where the Law is to take effect, it amounts to the same thing with an Abrogation of it; as may be plainly seen in the late King's *Dispensing Power*. For though it be true he pretended to no more, than to dispense with this, or that Person, who should undertake a publick Employment, either *Military* or *Civil*, without taking the *Oaths* and *Test*; yet since he granted this Dispensation generally to all Papists, and others that would transgress this Law, it amounted to the same thing, during his Pleasure, as an *absolute Abrogation* of it. And therefore I do very much wonder why divers, who are very zealous for the *Church of England*, and the *King's Prerogative*, should be so angry with him for erecting that *Power*, which not only this Author, but all others of his Principles have placed in him: And if the King may suspend this, and all other Laws, upon Causes *only known* to him, I do not see how he differs from being as absolute and arbitrary a Monarch, as the *Great Turk* himself; and may, when he pleases, notwithstanding all Laws to the contrary, take away Mens Lives without any due Forms of Law, and raise *Taxes* without *Consent of Parliament*.

M. But pray read on a little farther, and you will find that he very much restrains this *absolute Power*, in these Words: *By this means are all Kings, even Tyrants and Conquerors, bound to preserve the Laws, Goods, Liberties and Lives of all their Subjects, not by any* Municipal Law *of the Land, but by the* Natural Law *of a Father, which binds them to ratifie the Acts of their Forefathers and Predecessors in things necessary for the publick Good of their Subjects.*

F. Were I a Monarch limited by Laws, I would desire no greater a Power over them than this you have here brought out of this Author. For he says, *positive Laws do not bind the King, but as they are the best or only means for the preservation of the Commonwealth.* In the next place you see that all Kings are bound to preserve the Lives and Estates of their Subjects, not by any *Municipal Law* of the Land, but by the *Natural Law* of a Father, which binds them to ratifie the Acts of their Predecessors in things necessary for the publick Good of their Subjects. Now this *Paternal Power* is large enough of all Conscience to discharge Princes from any Obligation to the Laws farther than they please. For it before appears, that the Father of a Family governs by no other Law than by his own Will, and not by the Laws and Wills of his Sons or Servants; therefore if the Power of the King be wholly Paternal, he may alter this Will of his as often as he pleases: Nor can his Subjects, who are all one with Sons and Servants, have any reason to find fault with it. For he says, *There is no Nation that allows Children any Remedy for being unjustly governed.* And though it be true, that he restrains this Prerogative both in Fathers and Kings to the publick Good of their Children and Subjects; yet as long as he is left the sole and uncontroulable Judge of what is for the publick Good, all these fine Pretences will signifie nothing. For he is bound to observe or ratifie no Laws or Acts of his Predecessors, but what *he is satisfied* tend to this End: So that if he thinks fit to judge, that *Magna Charta*, for Example, or the Statute *de Tallagio non concedendo*, or any Liberty we enjoy, are not necessary, or contrary to the common Good, he is not tied to observe them. And upon this Principle it was that the Judges in the Reign of King *Charles the First* founded the *King's Prerogative* for *Ship-money*: For they supposed that the King, in case of necessity, (that is, for the publick Good of the Subjects) might lay a *Tax* upon the Kingdom, though without *Consent* of Parliament. So that upon this Pretence the King being the *sole Judge* of the *Necessity*, he might quickly have raised what *Taxes*, and as often as he had pleased.

But, lest our Kings should think themselves too strictly bound by their *Coronation Oaths*, to observe the Laws, pray see in the next Paragraph how this Author

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endeavours to help the King to creep out of that Obligation too. Therefore pray read on. *Others there be that affirm, that although Laws of themſelves do not bind Kings, yet the Oaths of Kings, at their Coronations, tie them to keep all the Laws of their Kingdoms: How far this is true, let us but examine the Oaths of the Kings of* England *at their Coronation: The Words whereof are theſe*: " Art thou pleaſed to cauſe to be " adminiſtred in all thy Judgments indifferent and upright Juſtice, and to uſe " Diſcretion with Mercy? Art thou pleaſed that our *upright* Laws and Cuſtoms " be obſerved; and doſt thou promiſe, that theſe ſhall be protected and main- " tained by thee?" *Theſe two are the Articles of the King's Oath, which concern the Laity, or Subjects in general; to which the King anſwers affirmatively; being firſt demanded by the Archbiſhop of* Canterbury: " Pleaſeth it you to confirm, and obſerve " the Laws and Cuſtoms of ancient Times granted from God, by juſt and de- " vout Kings unto the *Engliſh* Nation, by Oath unto the ſaid People, eſpecially " the Laws, Liberties and Cuſtoms granted unto the Clergy, and Laity, by the " famous King *Edward?*" *We may obſerve in theſe Words of the Articles of the Oath, that the King is required to obſerve not all the Laws, but only the* upright, *and that with Diſcretion and Mercy.* The Word *upright* cannot mean all Laws, becauſe in the Oath of *Richard the Second*, I find evil and unjuſt Laws mentioned, which the King ſwears to aboliſh: And in the old Abridgment of Statutes ſet forth in King *Henry the Eighth's* Days, the King is to ſwear wholly to put out evil Laws, which he cannot do, if he be bound to all Laws.

Now what Laws are *Upright*, and what *Evil*, who ſhall judge but the King? ſince he ſwears to adminiſter *upright Juſtice* with Diſcretion and Mercy; or (as *Bracton* hath it) *æquitatem præcipiat, & miſericordiam. So that in effect the King doth ſwear to keep no Laws but ſuch as in his Judgment are upright, and thoſe not literally always, but according to the Equity of his Conſcience, joined with Mercy, which is properly the Office of a Chancellor rather than of a Judge. And if a King did ſtrictly ſwear to obſerve all the Laws, he could not, without Perjury, give his Conſent to the Repealing or Abrogating of any Statute by Act of Parliament, which would be very miſchievous to the State.*

But let it be ſuppoſed for Truth, that Kings do ſwear to obſerve all the Laws of their Kingdoms; yet no Man can think it reaſon, that Kings ſhould be more bound by their voluntary Oaths, than common Perſons are by theirs. Now if a private Perſon make a Contract either with Oath, or without Oath, he is no farther bound than the Equity and Juſtice of the Contract ties him; for a Man may have Relief againſt an unreaſonable and unjuſt Promiſe, if either Deceit or Error, Force or Fear induced him thereunto; or if it be hurtful or grievous in the performance. Since the Laws in many Caſes give the King a Prerogative above common Perſons, I ſee no reaſon why he ſhould be denied the Privilege which the meaneſt of his Subjects doth enjoy.

I need not make any long Paraphraſe upon theſe Words: It is ſufficient that the King is here left *ſole Judge* of what Laws are *upright*, and what *unjuſt*; and conſequently what Laws he pleaſes ſhall be obſerved, and what not. So that no Laws, though thought never ſo juſt, and neceſſary by the Parliament at the time of making of them, ſhall ſignifie any thing, if he thinks fit afterwards to judge otherwiſe. And leſt this ſhould not be ſufficient, he hath found out another way whereby Princes may abſolve themſelves of this troubleſome Obligation of Oaths; and therefore he would have them no more bound up than common Perſons, who, becauſe they may have Relief in publick Courts of Juſtice, againſt an unjuſt Promiſe; *if either Error, Deceit, Force, or Fear, induced them thereunto; nay more, if it be hurtful or grievous in the performance*; Kings who have a Pretogative above common Perſons, and who acknowledge no Tribunal above themſelves, may abſolve themſelves of their Oaths whenever they think good; by ſaying it was extorted from them by *Deceit, Force, or Fear*: Or if they cannot ſatisfie themſelves without it, they might have had formerly the Popes's Diſpenſation for Money, which we read King *John*, and *Henry the Third* obtained to be abſolved of the Oaths they had taken to obſerve *Magna Charta*. But this Author hath found out a ſhorter cut, and hath made Kings both Judges and Parties, and to *abſolve* themſelves by a *Fundamental Right* of Government. And what hath proved the Concluſion of ſuch Princes who have taken this Author's Liberty of breaking their *Coronation Oath* at their pleaſure? It hath only taught their Subjects to imitate their Example, and to make as light of their *Oath of Allegiance*.

M. I will not deny, but perhaps Sir *R. F.* may have carried the Prerogative in this Point a little too far; yet that he meant honeſtly towards the Commonweal in all this, I pray ſee the 8th Section of this Chapter, where you'll find theſe Words; *Many will be ready to ſay, it is a ſlaviſh and dangerous Condition to be ſubject to the Will of any one Man, who is not ſubject to the Laws: But ſuch Men conſider not,* 1. *That the* Prerogative *of a King is to be* above all Laws, *for the good only of them who are* under *the Laws, and to defend the People's Liberties, as his Majeſty graciouſly affirmed in his Speech, after his laſt Anſwer to the* Petition of Right; *howſoever, ſome are afraid of the Name of Prerogative; yet they may aſſure themſelves, the Caſe of Subjects would be deſperately miſerable without it.* So that you ſee here he aſſerts no Prerogative in the King to be above all Laws, but only for the good of the People, and to defend their Liberties; which I think is a ſufficient reſtraint of Prerogative.

F. But read a little lower, and the People will have no ſuch great cauſe to thank him, as you may ſee by theſe Words: *In all Ariſtocracies the Nobles are above the Laws; and in all Democracies, the People. By the like reaſon, in a Monarchy the King muſt of neceſſity be above the Laws; there can be no Sovereign Majeſty in him that is under them; that which gives the very Being to a King, is the Power to give Laws; without this Power he is but an* Equivocal King.

And moſt part of what follows in this Treatiſe, is only to prove, that the *Parliament*, or Aſſembly of Eſtates, was a Creature wholly of the *King's Creation*, and conſequently, that he alone makes the Laws in it: And he hath alſo written a whole Treatiſe, called *The Freeholder's Grand Inqueſt*, to prove that it is the King's Authority alone that makes the Laws; and therefore that he can interpret and diſpenſe with them at his pleaſure. So that *Richard* II, had this Author liv'd in his time, might have made him a Judge as well us *Treſillian* and *Belkrap*, ſince they all maintain'd the ſame Principles. But, leſt we ſhould miſtake him, ſee what he ſays at the Concluſion of this Treatiſe: *For the confirmation of this Point,* Ariſtotle *ſaith, That a perfect Kingdom is that wherein the King rules all things according to his own Will; for he that is called a King according to the Law, makes no kind of Kingdom at all. This, it ſeems, alſo the* Romans *well underſtood to be moſt neceſſary in a Monarchy; for tho' they were a People moſt greedy of Liberty, yet the Senate did free* Auguſtus *from all neceſſity of Laws, that he might be free of his own Authority, and of abſolute Power over himſelf, and over the Laws, to do what he pleaſed, and leave undone what he liſt; and this Decree was made while* Auguſtus *was yet abſent.* Accordingly, we find that *Ulpian*, the great Lawyer, delivers it for a Rule of the Civil Law, *Princeps Legibus ſolutus eſt*, The Prince is not bound by the Laws.

So that upon theſe Principles, all Kings are not only diſcharged from the *Penalty*, but alſo the very *Obligation* of obſerving Laws, farther than they ſhall think fit. And indeed, this Author carries this Prerogative beyond what the moſt moderate *Roman* Emperors ever pretended to, as I can eaſily ſhow you from your own *Civil Law Books*; and therefore pray reach me down your Volume of the *Code*, and ſee here what the Emperor declares on this Matter *De Teſtamentis*. *Ex imperfecto Teſtamento nec Imperatorem hæreditatem vindicare poſſe, ſæpe conſtitutum eſt, licet enim Lex Imperii Solennibus juris Imperatorem ſolverit; Nihil tamen tam proprium Imperii eſt, quam Legibus vivere.* See likewiſe in the *Theodoſian Code* theſe words: *Digna vox eſt Majeſtate Regnantis, Legibus alligatum ſe Principis profiteri, adeo de Authoritate juris, noſtra pendet Authoritas, & re vera majus Imperio eſt ſubmittere Legibus Principatum, & oraculo præſentis Edicti quod nobis licere non patimur, aliis indicamus,* (viz. *Succeſſoribus Theodoſio & Valentino.*)

L. 3. *lib.* 6. *t.* 23.

C. de Legibus l. 4. *lib.* 1. *t.* 14.

So that you may here ſee, that even the *Roman* Emperors were more modeſt, than to declare themſelves diſcharged by their Prerogative, or thought of any of theſe ſubtle diſtinctions of this Author, from their obligation to the Laws, however they were from the Penalty; which is the true Senſe of this Phraſe of being *Legibus ſolutus*.

But God be thanked, moſt of our own Kings have been more conſcientious, than to maintain that they were not bound by their *Coronation Oath* farther than they pleaſed. For you may ſee in the Preamble to the *Statute of Proviſors*, made in the 25th of *Edward* III, where it is declared and acknowledged by the King himſelf, and both Houſes of Parliament, that the *Right of the Crown of England*, and the *Law of the Realm is ſuch*, that upon the *Miſchiefs* and *Damages* which happen to the Realm, he *ought*, and was *bound* of his ſaid People in his Parliament thereof, to make Remedy, and Law, in voiding the *Miſchiefs* which come thereof: And the

Raſtal, f. 99.

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King seeing the *Mischiefs* and *Damage* aforesaid, and having regard to the said Statute (*scil.* the former *Statute of Provisors*) he here farther acknowledges, *that he is bound by his Oath* to do the same to be kept, as the *Law of his Realm*, tho' by sufferance and negligence it hath been hitherto attempted to the contrary.

So likewise, King *Henry* IV. declares in full Parliament (as appears by the Parliament Roll) That whereas the Commons in Parliament had granted, that the King should be in as great Liberty as any of his Noble Progenitors; on which our said Lord of his Royal Grace, and tender Conscience, had granted in full Parliament, that it is not his intent, nor will he alter the Laws, Statutes and good Usages, nor take any Advantages by the said Grant; but will keep the ancient Laws and Statutes ordained and used in the times of his Noble Progenitors, and do Right to all People in Mercy and Truth *Selonc son Serment*, i. e. according to his Coronation Oath. *Rot. Parl.* H. IV. *n.* 108. *Act pour garder, les leys.*

M. I will not affirm, but Sir *R. F.* observing how much the King's Prerogative was run down by the long Parliament; and how the least slips and miscarriages in Government were aggravated by the Demogogues that then domineered, as open and violent breaches of his Coronation Oath, might be willing to make the best defence he could for such Miscarriages; and this Treatise of *Patriarcha*, being a Posthumous piece, perhaps he would have altered many things in it, had he lived to publish it himself; but I doubt not, but he was a very honest Man, and meant well to the Kingdom for all that. And therefore I hope you will not be too rigorous in your Censure of him.

F. I'll assure you, Sir, I shall not, because he hath been dead many Years, and therefore I had much rather censure his Writings, than his Person, which I never knew. But, if I may judge from his Works, he was certainly no Friend to Parliaments, or the Power of the Laws above the Prerogative: But that I may also shew you how dangerous and derogatory his Opinions likewise are to the Titles of all Sovereign Princes and Monarchs now in the World, however he may seem to write in their defence, pray turn to his *Patr. chap.* 1. *par.* 9. and to a Question, *What becomes of the Right of Fatherhood, in case the Crown eschear for want of an Heir*; he thus replies, which pray read, It is but the Negligence or Ignorance of the People *to lose the knowledge of the true Heir: For an Heir there always is; if* Adam *himself were still living, and now ready to die, it is certain, there is one Man, and but one in the World, who is next Heir, although the knowledge who should be that one Man be quite lost.* The which he likewise repeats to the same effect, in his Treatise of the Anarchy of a limited or mixed Monarchy. Pray see the place, and read these Words: *It is a truth undeniable, that there cannot be a Multitude of Men whatsoever, either great or small, though gathered together from the several Corners, and remotest Regions in the World; but that in the same Multitude considered by itself, there is one Man amongst them, that in Nature hath a Right to be the King of all the rest, as being the next Heir to* Adam, *and the other subject unto him; every Man by Nature is a King, or a Subject.* So that I think no Kings in the World being able to deduce their Pedigree from *Adam* (of whom there can be but one right Heir) they all (or at least all but one) are only Kings *de Facto*, and not *de Jure*, and Usurpers upon this Heir of *Adam*. So that if God would but be pleased to reveal who this next Heir is, all the Kings of the Earth were bound in Conscience to lay their Crowns at his Feet; though he were but a Cobler or a Linkboy. How ridiculous a Notion this is, I leave it to any indifferent Man to judge. Miscel. p. 273.

M. I hope this Opinion is like to have no very ill effect, unless any Prince, by virtue of this Title of *Adam*'s right Heir, should pretend a Right to an universal Monarchy; and then I think it were but reasonable, he should be put to make out his Title; but seeing no body doth so, to the best of my knowledge, it is but reasonable that all Princes should in the mean time enjoy what they are in lawful Possession of, till this Heir of *Adam* hath made out his Title, and then they may consider farther of it.

F. And it is very well, that this right Heir is not to be found; for if he were, all Princes would be Usurpers, who did not immediately resign to him. But this Doctrine is of more fatal consequence than you imagine; for it doth not only concern Princes in respect of *Adam*'s right Heir only, but also of any other right Heirs to Princes, who have lost their Right to a Crown never so many Ages ago: For look into his Directions for Obedience in doubtful times, and read this Passage: *By Humane positive Laws, a Possession time out of mind takes away, or bars a former Right, to*

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avoid a general Miſchief of bringing all Right into a Diſputation not decideable by Proof, and conſequently, to the overthrow of all Civil Government, in Grants, Gifts, and Contracts between Man and Man; but in Grants and Gifts, that have their Original from God or Nature, (as the Power of a Father hath) no inferior Power of Man can limit, nor make any Law of Preſcription againſt them. Upon this ground is built that Nullum tempus occurrit Regi, *no time bars a King.* And a little before, he gives us this reaſon of it: For tho' by humane Laws a long Preſcription may take away Right; yet a divine Right never dies, nor can be loſt or taken away. By which Principle, he renders the Titles of moſt (if not all) of the Princes of *Europe* at this day very weak and diſputable, whenever any other Perſon ſhall ſet up a Title againſt them.

M. But Sir *R. F.* hath found a very good Expedient for this; for he tells us, in the laſt cited Diſcourſe, *that the Paternal Power cannot be loſt, tho' it may either be*
pag. 273. *transferred or uſurped*; and in his Anarchy of a limited Monarchy, he thus more at large expreſſes it. *Many times, by the Act either of a Uſurper himſelf, or of thoſe that ſet him up, the true Heir of a Crown is diſpoſſeſſed, God uſing the Miniſtry of the wickedeſt Man for the removing and ſetting up of Kings; in ſuch caſes, the Subjects Obedience to the Fatherly Power muſt go along, and wait upon God's Providence, who only hath right to give and take away Kingdoms, and thereby to adopt Subjects into the Obedience of another Fatherly Power. And laſtly; in his Diſcourſe of Obedience,* &c. he more clearly ſettleth this Point, in anſwer ro an Objection there made; that moſt Kings now in the World, have no other Titles to their Crowns but Conqueſt or Uſurpation: He replieth, *That tho' all Kings were Uſurpers, yet ſtill the firſt Uſurper hath the beſt Title, being in Poſſeſſion by the Permiſſion of God; and where an Uſurper hath continued ſo long, that the knowledge of the right Heir is loſt by the Subjects; in ſuch caſe the Uſurper in Poſſeſſion is to be taken and reputed by ſuch Subjects for the true Heir, and is to be obey'd by them as their Father.* And I think you your ſelf will not deny, but that Kingdoms may be transferred from one Prince to another by Conqueſt, or a long Uſurpation; and that when there is no other better Title extant, the King in Poſſeſſion, or his Heirs, may have a good Title by a long Poſſeſſion, tho' it began by Uſurpation at firſt.

F. I have not now time to anſwer all that your Author hath as falſly, as incoherently ſaid concerning this Subject of Uſurpation; and I ſhould be glad to hear you, or any Man elſe that will undertake to defend him, make him him conſiſtent, not only with reaſon, but with himſelf, in this Diſcourſe you quote, concerning Obedience to Government in doubtful times. For to paſs by his unintelligible Notion, of ſuppoſing two ſupreme Paternal Powers ſubſiſting at once, and each of them laying claim to the Obedience and Submiſſion of the Subjects, the former that of the Uſurper, *Who being in Poſſeſſion of the Crown by the permiſſive Will of God, who hath thought fit to adopt the Subjects into a Fatherly Power*; and the latter, that Paternal Right which he ſuppoſes ſtill to remain in the expulſed Prince, and his Heirs for ever. By which means the Allegiance of the Subjects is ſo divided and perplex'd, that they can never be able to tell, when the Allegiance to the right Heir is to take place before that of the Uſurper.

M. But if you had been pleaſed better to obſerve this Diſcourſe, you would find that Sir *R. F.* hath very well obviated this Objection, as appears by theſe
Ibid p. 68. Words. *The Right of Fatherly Government was ordained by God for the preſervation of Mankind; if it be uſurped, the Uſurper may be ſo far obeyed, as may tend to the preſervation of the Subjects, who may thereby be enabled to perform their Duty to the true and right Sovereign, when time ſhall ſerve; in ſuch caſes to obey an Uſurper, is properly to obey the firſt and right Governor, who muſt be preſumed to deſire the ſafety of his Subjects. The Command of an Uſurper is not to be obeyed in any thing tending to the Deſtruction of the Governor, whoſe being in the firſt place is to be looked after.*

F. This is, I confeſs, a very pretty Diſtinction, to make the Uſurper, who governs whether the right Heir will or no, yet to do it by his Conſent, and that the Subjects, when they act thus, do but ſtill obey their rightful Governor, which Suppoſition would be contradictory to what your Author hath already laid down of the Subjects being adopted into the Obedience of another Fatherly Power by the Uſurpation; for if it be as he now makes it, they ſtill remain under the Paternal Power of the former Prince, and the Uſurper governs only as his Deputy; which is a very choice refined Notion, by which all Men had been obliged in Conſcience to yield as full Obedience to *Cromwell* and the *Rump*, *in all things that did not tend to*

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the Deſtruction of the late King's Perſon, as to him himſelf; which I ſuppoſe you high Royaliſts will by no means admit of.

But this is not the main Matter that I have to except againſt; for if the Principles I have read out of that Treatiſe be true, *That the Right of a lawful Monarch and his right Heir, is a divine Right; and that no length of time or preſcription can bar it; becauſe a divine Right never dies, can be loſt, or taken away, till the knowledge of the right Heir be loſt by all the Subjects*; and till which time Uſurpers and their Heirs can never acquire an abſolute and indefeaſible Right in the Kingdoms they poſſeſs; it will certainly follow that the Title that moſt Princes of Chriſtendom have to their Crowns, will be hereby rendered diſputable and uncertain: For ſince this Author acknowledges, that the Titles of moſt Kings at this Day begun by unjuſt Conqueſts or Uſurpations at firſt; the right Heirs of many of which expulſed or depoſed Princes are ſtill, or were lately in being; they might upon this pretence make War upon the Prince in Poſſeſſion and his Heirs, to the World's end: And tho' I grant, he ſays, that an Uſurper is to be fully obeyed, when the knowledge of the right Heir is loſt by all the Subjects, it is extreamly uncertain and doubtful what he means by it; for if he means a perſonal Knowledge, few ordinary Subjects, but thoſe that have perſonally known all the Royal Family, can thus know who was the right Heir; and ſo conſequently, as ſoon as ever his Father or Anceſtor that held the Throne is turned out, or dead, few private Subjects can have any perſonal Knowledge of this Heir. But if he means a Moral or Traditional Knowledge, ſuch as is conveyed down to Poſterity by Hiſtory, Authentick Records, or Genealogies; I know not how ſuch a Knowledge can ever be ſaid to be loſt, as long as ſuch Hiſtories or Memorials remain in being: And that this is ſo, is apparent, many Princes in *Europe* having upon this ground better Right to the Crowns of ſome Neighbouring Kingdoms, than thoſe that wear them: And we know that by virtue of ſuch an old Title from *Charles the Great*, the King of *France* looks upon himſelf to have a good Title to *Alſatia*, *Flanders*, and all the Low Countries, and as much of *Germany* as he can get: So that I will leave it to your ſelf to judge, whether theſe Principles do not only render the Titles of moſt Princes doubtful and uncertain, but the Subjects Allegiance too.

M. I cannot deny, but Sir *R. F.* may have carried this Point of Obedience and Submiſſion to Uſurpers, and of a concurrent Right in the lawful Monarch and his Heirs, a little too far. For I think it were much better to ſuppoſe with *Grotius* and other Writers, that after the third Generation, or Succeſſion of the Crown in the Family of the Uſurper, they may have a good and perfect Title to their Crowns, againſt the right Heirs of the lawful Monarch; (and this I take to be highly reaſonable for the Peace and Welfare of Mankind) than that they ſhould be always divided in their Allegiance between two oppoſite Princes; but till then, I ſuppoſe the Subjects are bound to aſſiſt, and ſtand for the lawful Heir and his Poſterity, as far as is poſſible, without their own apparent Deſtruction.

F. I confeſs this Suppoſition is much more reaſonable than the former; but I ſhould be glad to know by what Law of God or Nature, the peaceable poſſeſſion of a Crown, by an Uſurper and his Heirs, juſt for three Generations or Succeſſions, ſhould give a Prince a better Title than three or four Years Poſſeſſion; for God may have declared his Will as ſufficiently in that time, as in three or four hundred: And if your Reaſon be good, that it is for the Peace and Safety of Mankind, that the Title of the right Heir ſhould be loſt and extinct after ſuch a time; I cannot ſee why it ſhould not be more for the good of Mankind, that their Allegiance ſhould be ſettled and aſcertained in a far leſs ſpace, that is, as ſoon as the Conquerer or Uſurper is quietly ſettled in the Throne, and hath received the Conſent or Submiſſion of all the Subjects. But I do not deſire at preſent to enter any farther into this knotty Diſpute about *Conqueſt* or *Uſurpations*, but I rather deſire to refer it to our next meeting.

M. Well, ſince you will have it ſo, I yield to it; but in the mean time I cannot but ſmile at your great partiality to the People, who upon your Principles, if they have but once given their *Conſent* to the *Uſurper*, he ſhall preſently have as good a Title as the moſt rightful Monarch in the World: So that *Cromwell* having had this *Conſent of the People in his Mock-Parliament*, had as good a Title as King *Charles* II. So that notwithſtanding whatever you may pretend to the contrary, you are no ſuch Enemy to *Uſurpers*, as you would make your ſelf: But however, you

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have no reaſon in the World (even by your own Principles) to except againſt this Author's Hypotheſis of transferring the Subjects Allegiance by a Conqueſt or Uſurpation.

F. I do not deny what you ſay, but then the Conqueſt muſt be in a juſt or lawful War; or elſe, if the *Great Turk*, or *French King*, ſhould, without any Provocation given, make War upon, and conquer this Kingdom, and uſe the People with the higheſt Tyranny and Cruelty, they muſt be all bound in Conſcience, not only to become, but continue abſolute Subjects, nay Slaves to ſuch a Conqueror, without any Reſiſtance. But let the *Power of Uſurpers* or *Conquerors* be what it will, I am ſure it cannot be that of *Paternal Authority*, for the reaſons already given: Nor can it be the *Uſurpation* or *Acquiſition* of the Power of a Maſter of a Family; for then the Subjects not being the Children of the Conqueror or Uſurper, muſt be all Slaves inſtead of Subjects: So that I muſt again tell you, that it is from your want of diſtinguiſhing between *Paternal*, *Maſterly*, and *Regal Authority*, which hath led you into all theſe Miſtakes in this Matter; for the Relations of a Father, a Maſter and a King, are all really diſtinct and different, ſo that one of them is not the other, as any Man may eaſily perceive, that doth but hear the three Names pronounced to him, and conſider their Signification: And therefore quitting this ſubject for the preſent, if you have any better Arguments to prove your *Divine Inſtitution* of *Monarchy*, pray produce them, for it grows late.

M. I ſhall readily obey your Commands; but pray Sir, in the mean time remember that we aſſume this Queſtion the next time we meet. But to come to the Matter in hand, I think there are yet ſome material Arguments behind, to prove *Monarchical Government* of *Divine Inſtitution*: For in the firſt place, you may pleaſe to remember, that you your ſelf have acknowledged that all *Civil Government* proceeds from God. *Secondly*, You have likewiſe admitted, that the *Government of Fathers*, or *Heads of Families*, was the *firſt and moſt ancient Government* of any in the World after the Fall; when ſome Government became neceſſary for the Puniſhment of Offences, and the reſtraining of the inordinate Appetites and Paſſions of Mankind. And *laſtly*, That this Government having abſolute Power of Life and Death, in ſome Caſes, over the Wife, Children, and Servants of the Family; and that if this Power is conferr'd upon them by God (which you likewiſe granted) and doth not depend upon the conſent or compact of the Wife, Children and Servants: If theſe things were ſo, I leave it to your ſelf to conſider from the Premiſes, whether this Power in Heads, or Fathers of Families (call them which you pleaſe) is not a *Monarchical Power*, or the Government of one Man, and that ordained by God; and that this was the only Government in the World, before the *Inſtitutions of Commonwealths*, you your ſelf cannot deny.

F. I ſhall ſhew you plainly, that you would impoſe a Fallacy, either upon your ſelf or me in this Argument, and ſuch a one which I have likewiſe already anſwered at our laſt meeting: For I then told you, that the Government of ſuch Heads or Fathers of Families was only an *Oeconomical*, and not a *Civil Power*; and this I proved by divers Arguments againſt what you then argued to the contrary; and therefore I think I may yet ſafely affirm, that *Kingly* or *Monarchical Power* cannot be proved to be of *divine Inſtitution* by this Argument; and I have a greater Man than Sir *R. F. viz.* the Judicious Mr. *Hooker* on my ſide, who makes a plain diſtinction between ſuch a Head, or Maſter of a Family, and a King, as appears by theſe words in his Eccleſiaſtical Policy, which I deſire you would read with me: *It is no improbable Opinion therefore, which the Arch-philoſopher was of, That the chief Perſon in every Houſhold was alwayes, as it were, a King; ſo when numbers of Houſholds joyned themſelves in Civil Societies together, Kings were the firſt kind of Governors amongſt them; which is alſo, as it ſeems, the reaſon why the Name of Fathers continued ſtill in them, who of Fathers were made Rulers; as alſo the ancient Cuſtoms of Governors to do as* Melchiſedeck, *as being Kings to exerciſe the Office of Prieſts (which Fathers did at the firſt) grew perhaps by the ſame occaſion. Howbeit this is not the only kind of Regiment that hath been received in the World, the inconveniences of one kind have cauſed ſundry others to be deviſed. So that in a word, all* Civil Regiment, *of what kind ſoever, ſeems evidently to have riſen from the deliberate Advice, Conſultation, and Compoſition, between Men judging it convenient and helpful, there being no impoſſibility in Nature conſider'd by itſelf, but that Man might have lived without any* Publick Regiment. So

Hooker's Eccl. Pol. lib. 1. §. 10.

that

that you may see, that tho' he places the Original of all Governments in the Heads or Fathers of Families (which Opinion I shall not oppose) yet it is plain that he makes a clear Distinction between *Oeconomical Government*, and that *Politick* or *Civil Power*, which arises from Compact between Men. So that this will not serve the purpose you bring it for. You may now proceed to what other Arguments and Instances you please; but pray do not make use any more of the Examples of the Patriarchs either before or after the Flood, since they are either altogether uncertain, or else as to those after the Flood, I have proved them to have been not Kings, but only Masters of separate Families. And you may likewise omit *Moses*, *Joshua*, and the Judges, as Instances of *Monarchical Power* by *Divine Institution*; since I have so lately proved their Authority not to have been at all Absolute or Regal.

M. I shall not any longer insist upon them, since you will not admit of those Instances, tho' I think there may be a great deal of weight in them: But thus much I suppose you cannot deny, as well from the Testimony of sacred as prophane History, that *Monarchy* is the first and most ancient Government in the World, as appears by those Remains we have left concerning the *Egyptian* and *Assyrian Monarchies*: And as for the Government of God's own People the *Jews*, he was pleased to be King over them himself, tho' to govern by his Viceroys, till such time as he was pleased to make *Saul* and *David* Kings over them. Now what can be a greater Argument than this for the *Divine Institution* of *Monarchical Government*?

F. I suppose you will not urge the Antiquity of a Government to be a Mark of its *Divine Institution*; it may indeed be an Argument to prove that *Monarchy* was the most *natural Government*, because the most simple and easy for Men to light on; and so no doubt it was in the first Ages of the World, before *Ambition*, *Avarice* and *Luxury* had debauched the Minds of Monarchs, the best sort of Government. And so on the other side, there is this to be objected against it, that the setting up of so many Commonwealths upon the Ruins of Monarchies, shewed that Men found great Mischiefs and Inconveniencies in that sort of Government, when once it grew *Tyrannical*, or else they had never departed from it; and this made them, as *Brutus* said at the beginning of the *Roman* Commonwealth, to invent other sorts of Government, which might partake of all the Benefits without the Inconveniencies of *absolute Monarchy*.

But as for your Instance of God's being himself King over the People of *Israel*, this touches not the Question in hand, since that being a *Theocratical*, and not a *Civil Commonwealth*, could concern no other Nation but themselves: And as for your other Instance of God's making *Saul* King, I hope you will not bring that for an Argument of his Approbation, which it appears he was so angry with the *Israelites* for desiring; and tho' it is true, he did at their Request make them a *King*, yet it is apparent God would have been much better pleased had they still continued without one: So that I think there can no conclusive Argument be drawn from any Examples in the *Old Testament*, to prove *Monarchical Government* to be of *Divine Institution*.

M. Well, however slight you make of my Authorities out of the *Old Testament*, yet I hope I shall be able to shew more cogent ones out of the *New*, to prove, that *Monarchy* is the only Power instituted, or so much as taken notice of, by our Saviour *Christ* and his *Apostles*. And therefore when he would command the *Pharisees* to yield Obedience to the Supreme Power then in being, he bids them, upon their shewing him a Piece of Money, to *render to* Cæsar *the things that are* Cæsar's, not taking any notice of the *Senate* or *People*, whose Authority these *Cæsars* had usurped. And if St. *Paul*, in his Epistle to the *Romans*, had only said, *Let every Soul be subject to the Higher Powers*, and said no more; then Men might indeed have disputed, whether St. *Paul* by *Higher Powers* had not meant as well other Governors as *Kings*, or other Forms of Government as *Monarchy*. But the good luck is, St. *Paul* hath been his own Interpreter; for, after the general Doctrine of *Obedience* to be given by all Men to the *Higher Powers*, he proceeds next to charge it home upon each particular Man's Conscience, under pain of Damnation, saying, *Wilt thou not be afraid of the Power?* which Power he expounds in the Singular Number, restraining it to one Person: *He is the Minister of God to thee*, &c. It is not, *They are the Ministers*. And then again, *He beareth not the Sword in vain*. And a third time, in the same Verse, lest we should forget it, he says, *For he is*

Matt. 22. 21. F. P. O.

the Minister of God, &c. So St. *Peter* also doth the like; for the self-same Word that St. *Paul* useth for *Higher*, in St. *Peter* is translated *Supreme*: So that tho' in our *English* Bibles the Words differ, yet in the Original they are both the same. And St. *Paul* might have been Englished, *Let every Soul be subject to the Supreme Powers*; or St. *Paul* might have been also translated, *Whether to the King as to the Higher*. Yet there is this difference, that whereas St. *Paul* useth the Word in the Plural Number, St. *Peter* hath it in the Singular, and with Application to the *King* only, without taking any notice of any Governors but Kings, and those sent by them. And it is farther to be noted, that St. *Peter* and St. *Paul* wrote their *Epistles* at a time when the *Roman* Senate had some share in the Government; and that it was (in appearance at least) a *Commonwealth*: So that some Authors suppose, that notwithstanding the Emperors by strong hand had usurped a Military Power, yet a great share of the Government was for a long time, nay even then, in the Senate and People. But for all this, neither of the two Apostles take any notice of any such *Popular Government*; no, nor our Saviour himself, who divideth all between *God* and *Cæsar*, and allows nothing, that we can find, for the *People* or *Commonwealth*.

F. I think your Quotations out of the *New Testament* will prove of no more weight than those from the *Old*, and that they will not make out *Monarchy* to be of *Divine Institution*, any more than the former: For our *Saviour's* Answer to the *Jews* signifieth no more, than that *Tribute*, and all *lawful Dues*, were to be paid to *Cæsar*, as the *Supreme Power* then in being; to answer those *Jews*, who doubted whether any Obedience were to be given to a foreign Prince of another Religion than their own. The like Answer may be given to what St. *Paul* says in the *Romans*, *Let every Soul be subject to the highest Power*; which was chiefly directed to the newly converted *Jews*, who might doubt, as well as their Countrymen in *Judea*, whether they were bound in conscience to be subject to Heathen Magistrates; as also against the Sect of the *Gnosticks* (then newly sprung up) who, tho' they called themselves *Christians*, yet looked upon themselves to be thereby discharged from all Subjection or Obedience to Civil Powers; being those whom St. *Jude* expresly speaks against, *Who despise Dominion, and speak evil of Dignities*. And therefore when St. *Paul* speaks of such *Higher Powers*, it is not in the Plural, but Singular Number, terming him, *the Minister of God*; because that at that time there was no such thing as a *Commonwealth* (as he knew of in the World) the two greatest Empires, the *Roman* and the *Parthian* being then governed by *Monarchs*. The like I may say to that other Text you have quoted out of St. *Peter*, which may very well be reconciled with that Place of St. *Paul*; tho' the one called the Higher Powers, *the Powers ordained of God*; and the other calls them, *an Humane Ordinance*, or Creature (as it is in the Original) since they certainly derive their Authority from God, tho' by the Mediation or Consent of Men.

Jude 8.

And I believe you will prove mistaken in affirming, that the Senate or People had any Power when St. *Peter* and St. *Paul* wrote these *Epistles*: For it plainly appears, that whether these *Epistles* were written in the Reigns of *Claudius* or *Nero*, the Government was then wholly in the *Roman Emperors*: For tho' I grant, that during the Time of *Augustus* the Senate had some shadow of Power, and that divers Provinces were under their Government; yet by that time *Tiberius* had reigned but a few Years, he quite took away all Power from the Senate, and made them no more than what the Parliament of *Paris* are to the *French* King, meer Ministers of his Tyranny, and oblig'd to verify all his Edicts; and the Compliance and Flattery of these Senators was so servile, that they passed whatsoever Decrees he sent them, without the least Hesitation; till it became so fulsome even to himself, that it made him cry out, *O genus in servitutem nata!* So that all you have said on this Subject signifies no more, than that our Saviour and his Apostles did not come into the World to dissolve or alter the Civil Governments, or the Policies of Kingdoms, but to command Obedience to them, as they found them settled in the World, as the moderate *Melanthon* very well observes, *Christus non venit mutare Politias*.

And I doubt not, but if our Blessed Saviour had thought fit to come into the World about half an Age sooner, and to have been born and preached the Gospel in the time of the *Roman Commonwealth*, but he would have commanded the *Jews* to have paid Tribute to the *Senate* and *People* of *Rome*, as well as he did to *Cæsar*; And St. *Peter* would have enjoined all Subjection and Obedience to be given them;

and

and might have said with greater Reason of them, than of those subordinate Magistrates they sent to govern their Provinces, that they were *the Ministers of God.* And if your Arguments for the *Divine Right* of Kings be true, it would be no Rebellion at this day for Subjects to rise up and destroy the Supreme Powers in all *Commonwealths*, because they are not *Monarchical*; and consequently those, in relation to whom God hath left us no Rules of Obedience. Which Doctrine if any Man should offer to preach in the Territories of *Venice* or *Holland*, I think, in the former the Preacher might very deservedly be sent to the Gallies, and in the latter they would at least send him a Pair of Shoes. But if you have any thing farther to urge for the *Jure Divinoship* of *Monarchy*, pray will you let me hear it, for I am weary with answering such Trifles.

M. I confess I have not much to object against what you have now replied, and therefore I shall insist no farther upon it; only thus much I am satisfied of, that God, by his own Example, as well as Institution among the *Jews*, seems more particularly to have approved of Kingly Government (and that absolute too) than any other. Not that I will condemn all *Commonwealths* as unlawful, but that as being *Sovereign Powers*, they may be also ordained of God.

But I have another Objection to make against your *Hypothesis*, and that is, you have in your former Conversation supposed a natural Property in things, precedent to Civil Government, which can scarce be understood. For by what Right can any Man lay claim to any Property, but by the Laws of the Government in which he lives? And how can there be any such Laws before there was some Supreme Legislator to make them? So that the only way (I know of) to solve this Difficulty, is to suppose, that the sole Dominion of things was in *Noah* after the Flood; and that whatsoever Property in any thing his Posterity possess'd in several, they enjoyed it by his Grant and Allotment, and in virtue thereof transmitted the same to their Posterity, without waiting for the Election or Consent of the People, or entering into any Articles of Capitulation with them whom they were to govern, as you suppose was necessary for the first Institution of *Civil Government.* *S. P. P.*

And the Texts in the tenth of *Genesis* seem to import as much: *By these were the Isles of the Gentiles divided in their Lands, every one after his Tongue, after their Families in their Nations. These are the Families of the Sons of* Noah, *after their Generations in their Nations; and by these were the Nations divided in the Earth after the Flood.* That is, not only the Nations themselves, but the *Isles* or *Countries* of the Earth were divided by these Patriarchs, amongst their Posterities, into particular Shares and Territories. Ver. 5. 32. Ver. 32.

And so likewise in all the Absolute Monarchies in the World, all the Property that Men enjoy, either in Goods or Lands, is either actually in the Prince, or else was at first derived from him; tho' I do not deny but when such a distinct Propriety in Goods or Lands is once instituted by the *Monarch* in any Kingdom, that he cannot again alter it or take it away, without manifest Violence and Injustice.

And hence it is that our common Lawyers maintain, that all the Lands in *England* are held of the King, either mediately or immediately: For upon the Conquest by *William* the Conqueror, all Mens Estates were thereby vested in him. So that there is no way so natural and easy to solve all those Difficulties that do arise concerning the Original of *Civil Government* and *Property*, than to make them begin together in the Persons of *Adam* and *Noah*, and thence deriv'd to all their Posterity: So that whatsoever absolute Dominion *Princes* or *States* have claimed in those Countries and Places, which they have either seiz'd upon themselves, as the first Occupants, or else have conquer'd from others, they enjoy'd them meerly as they represented *Adam* or *Noah*, the first Monarchs of the World. Nor can we other way avoid these several other intolerable Inconveniences and Absurdities, that will follow from supposing an original Community of things, or that every Man at first might take what Quantity of Land he pleas'd, without the Authority or Assignment of any Supreme Power.

F. As to what you say concerning God's approving Monarchy above all other Governments, by his instituting it among the *Jews*, that way of arguing is very uncertain and fallacious; since one may by the same reason argue, that the *Ceremonial* Part of the *Mosaical Law* was the best that God could have contrived, because he was pleased to prescribe it to the *Jews*, during the time they should be under the Government of it. No doubt God prescribed them such a Govern-

ment both in Church and State, as he thought fit for their preſent Occaſion and Inclinations; but whether that were the beſt, or of perpetual Inſtitution, is no where ſaid.

But as for the other part of your Argument, I thought you had been very well ſatisfied by what I ſaid at our firſt Meeting, that neither *Adam* nor *Noah* had, by Grant or Donation from God, a ſole Right to the Earth and all things therein. But ſince you are not yet ſatisfied with what I there ſaid, I ſhall anſwer this Objection more particularly; and I doubt not but I ſhall make it ſo plain to you, that you your ſelf ſhall confeſs, that there is no ſuch great Myſtery or Difficulty in the tracing of *Property*, as alſo *Civil Government*, to their firſt Originals, without ſuppoſing any ſuch abſolute Dominion or Property in *Adam* and *Noah*, or in any other Supreme Power, as their Succeſſors. I ſhall therefore firſt of all remove the main Obſtacle you have laid in the way, and ſhew you, that the Places of Scripture you have cited to this purpoſe do not prove the thing you intend them for. I did before ſhew you, that there was no manner of ground for Sir *R. F.'s* Opinion, that none of *Adam's* Sons could have a Property in any thing, without *Adam's* Aſſignment; nor that any of *Noah's* Sons, when ſeparated from their Father's Family, could have any *Property* in any thing but by their Father's Donation; *Scripture* and *antient Hiſtory* being altogether ſilent in theſe Matters. And therefore you are fain to lay hold of the firſt Place of *Scripture* that you think might ſerve your turn, which will not do the buſineſs neither.

For ſuppoſing I ſhould grant you, that in the Diſperſion or Diviſion that was made of Mankind after the Flood over a great part of the World, the *People* that then followed their Anceſtors or Leaders after this Diſperſion (tho' the Text doth not mention any ſuch thing) followed them as Princes or Monarchs; yet this will not prove what you would have, that theſe Fathers of *Nations* made this Diviſion of the Earth in right of that Dominion which God conferred at firſt on *Adam* and *Noah*; ſince (as I have already proved) if this Diviſion had been made in right of the Dominion that deſcended upon *Noah*, it ought to have been performed by the Authority of only one Man, and him the eldeſt Deſcendant of the eldeſt Son of *Noah*: And I have alſo ſufficiently ſhewed you the Abſurdity of this Fancy of ſuch a *Divine Right*. And beſides, it plainly contradicts it ſelf; for either this Diviſion you talk of was made in the Days of *Noah*, or it was not: If the latter, then it is apparent, that from the time of *Noah* to that of *Heber* there was a Community of Things and Properties; tho' you have aſſerted the contrary: If the former, and that the Earth was divided before, then to what purpoſe was this Diviſion in the Days of *Peleg*? And tho' I grant, that about that time every Language or Nation might, under the Conduct of their Prince or Leader, ſeize upon ſome Territory or Iſland ſufficient for them to inhabit in; yet doth not the Text tell us, whether the Country they lived in was by them divided into particular Shares, or whether they made uſe of it in common, as the *Indians* of *America* do at this day, where the Quantity of Land doth far exceed that of the Inhabitants that live in it.

Nor laſtly, ſuppoſing that a Diviſion was made of theſe Countries they then inhabited, doth it tell us, whether it was done by the *ſole Authority* of their Prince or Leader, claiming as his own the whole Dominion of it, ſo that no Man could have Right to a Foot of Ground in it but himſelf; or whether this Diviſion was made by the joint Conſent and Agreement of all the reſt of the Heads of Families, and other Freemen that went along with him. The Scripture is ſilent in theſe Circumſtances, that only telling us, that the Great Grand-ſons of *Noah*, mentioned *Gen.* 10. *The Iſles of the Gentiles were divided in their Lands, every one after his Tongue, after their Families in their Nations*; and that this Diviſion was in the Days of *Peleg*: But no where declares, whether every particular Region or Country was then divided into diſtinct Shares or not.

And as for what you ſay, that all Princes, and Conquerors of Territories and Countries, have the like abſolute Dominion and Property in them, as *Adam* and *Noah* had over the whole World; if it were no more than that, I doubt it would be very little; ſince I have already proved, and I think you muſt grant, that no Monarch at this day can claim his Crown as the right Heir of *Adam* or *Noah*, or as their Repreſentatives; and it will, I think, be much harder to prove, that the *ſole Property* of an acquired Country or Kingdom muſt be in them by virtue of any ſuch Right. But as for your Inſtance of *William* the Conqueror's having a Right to all the Lands in *England* by Conqueſt, ſince it requires ſomewhat a longer An-

ſwer than the Time will now afford, I ſhall refer ſpeaking farther of it till another Opportunity: But pray, Sir, at preſent make me ſee a little plainer what thoſe Inconveniences and Abſurdities are that will follow from my Hypotheſis, that God at firſt gave the World and all Creatures therein to Mankind, to be uſed and enjoyed in common, if they thought fit.

M. I ſhall ſhew you ſome farther Abſurdities that will follow from it than I have done already: For tho' *Grotius* and *Selden* indeed maintain, that a Community of things was by the Law of Nature, of which God is the Author, and yet that ſuch a Community ſhould not be able to continue, ſeems to derogate from the *Providence of God*, to ordain a Community of things which could not continue. And it ſeems alſo an Act of high Preſumption in the Deſcendants of *Noah*, to abrogate the *Natural Law of Community* by introducing that of a Propriety in things. *F. O. G. p.* 48.

F. I pray give me leave to interrupt you, that you may not run on in a Miſtake: For let *Grotius* or *Selden* aſſert what they pleaſe, I am not tied to ſubmit to it; and therefore when I ſay, that God gave the World, and all the Creatures therein, to Men, to be uſed in common, if they pleaſe; I thereby underſtood, that God hath by the *Laws of Nature* commanded nothing in this matter, but hath left the Earth and all things therein to be uſed in common, or in ſeveral, as may beſt conſiſt with the Convenience, Neceſſity, or Cuſtoms and Laws of each particular Nation or Commonwealth, who God deſigns ſhould live peaceably together, and make the beſt uſe of the Country where they inhabit, and the things therein contained, for their own common Maintenance and Safety, according to the Expreſſion of the Royal *Pſalmiſt*: *But the Earth hath God given to the Children of Men, i. e.* all the Deſcendants of *Adam*.

M. Well, ſuppoſe it were ſo, the prime Duties of the *Second Table* are chiefly converſant about this *Right of Propriety*; but if this *Propriety* were introduced by Humane Laws or Agreements, as *Grotius* and you your ſelf ſuppoſe, then both the *Moral* and *Divine Law* would depend upon the *Will of Men*; ſo that there could be no *Law of Nature* againſt Adultery or Theft, if Women and all things elſe had been in common. *Ibid.*

F. This Objection wholly proceeds from your not having any diſtinct or true Notions of the Nature and true Original of *Propriety*; and therefore if you pleaſe to hear my Account of it, I hope you will grant (when I have done) that your Objection againſt the Community of things will be to no purpoſe. I do therefore in the firſt place diſtinguiſh between a *Natural* and a *Civil Propriety*: By the former Men might be guilty of *Theft* before *Civil Propriety* was inſtituted; but as for *Adultery*, that was always unlawful both by the Laws of God and Nature, which abhors Community of Women and promiſcuous Copulations; and God hath particularly ordained, that *the Man and his Wife ſhould be one Fleſh*: And no Man, that maintains a natural Community of things, ever ſuppoſed that Women were amongſt thoſe things that were to be in common, or that a Man had the ſame kind of Propriety in his Wife, as in his Horſe; ſo that the Command againſt *Adultery* might very well conſiſt with the Community of things.

M. Suppoſe I grant this, I do not underſtand how there can be a natural Propriety, and yet a Community in things, as you ſuppoſe.

F. I wonder you ſhould not be able to apprehend this, and have been ſo often at an Ordinary and a Play-houſe: At the former, you know, tho' a Man hath a Right to his Dinner, yet all the Meat at the Table being in common, he cannot call any part of it his own, till he hath cut it or divided it from the reſt; and at the latter a Man hath a Right to a Place either in the Box or in the Pit, and yet he cannot tell where it is, till he hath placed himſelf in it, or ſent ſome body to keep it for him.

M. I do apprehend what you mean; but pray explain to me the Manner of this *Natural Propriety* a little more at large.

F. I would readily do it (ſince if that were well done, I grant it would be a great ſtep to the clearing of the Original and Nature of all *Civil Power*) were it not now too late to enter upon ſo long a Subject; and therefore I think we may both be ſufficiently tired with Talk, ſo as to put it off until another Opportunity, when I ſhall give you my Thoughts of the true Original of *Civil Government*, in what ſenſe it proceeds from God, and yet how far the *Conſent of the People* is neceſſary to make it obligatory on the Conſciences of the Subjects; which when it is

once

once well settled, I hope there will be little need of disputing farther, whether this *great Alteration* hath been brought about by lawful Means or not.

M. I thank you for the pains you have taken to inform my Understanding in this matter: And therefore since 'tis now very late, I desire we may adjourn our Conversation to another time; and then I desire that you would prepare your self to discourse with me of the second important Question we agreed on, *viz. the Irresistibility of all Supreme Powers by their Subjects*; not not only because Resistance in any case whatsoever is inconsistent with Supreme Power, and destructive to the Peace of Civil Society, but chiefly as they derive their Authority immediately from God, and are only to render an Account to him of their Actions.

F. I will not deny but what you have said is true in some sense, *That all Sovereign Power is derived from God, and is also as such irresistible by Subjects*; but to affirm generally and absolutely (as most of your Opinion do) that all Commands and Acts of Men endued with this Supreme Authority, whether good or bad, lawful or unlawful, are part of that Authority derived from God, and therefore irresistible in any case, or upon any necessity whatsoever, is so dangerous a Proposition, that I know none that hath contributed more to the Encouragement of the King, and the Popish Faction he favoured, to make all those Breaches upon our Laws, Religion, and Liberties, which we have suffered since the Beginning of his Reign.

M. I am so well pleased with the Freeness and Ingenuity of your Conversation, that I desire nothing more than to discuss this important Question with you at our next Meeting: But I beg your pardon, if being taken up by some Business to morrow, I adjourn our next Meeting to the Day after, when, if you please to come at the same Hour as you did to night, you shall here find me ready to wait on you. In the mean time I must bid you good night.

F. Your Servant, Sir, I wish you heartily good night; I will not fail to meet you at the Time appointed.

Bibliotheca Politica.

DIALOGUE III.

Whether Resistance of the Supreme Power by a whole Nation or People, in cases of the last Extremity, can be justified by the Law of Nature, or Rules of the Gospel.

F. YOU are welcome, Sir; I see you are a punctual Man to your Word. Will you be pleased to sit down by the Fire, and drink a Dish of Tea?

M. I thank you, Sir: I assure you, I love to be punctual in small things, as well as in great ones, when I am not hinder'd or prevented by Business.

F. Before we come to the Question we the last time resolved to make the Subject of our present Entertainment, it will, I think, be convenient for me to look back, and see what I have already proved at our two former Conferences, *viz.*

1. That *Adam* had not, either by *natural* Right of Fatherhood, or by *positive* Donation from God, any such Authority over his Children, or Dominion over the World, as you pretended.

2. That if he had, yet his Sons or Heirs had no Right to it.

3. That if his Heirs had, there being no Law of Nature, nor positive Law of God, that determines who is the right Heir in all Cases that may arise; the *Right* of *Succession*, and consequently of bearing Rule, could not have been certainly determined without the Judgment of the rest of the Children or Descendants of *Adam*.

4. That the Knowledge of the *right Heir* of *Adam* (supposing still there was one) being now long since lost, no Prince or Monarch in the World can graft any Title upon this Paternal Dominion of *Adam* or *Noah*.

5. That all Authority of inflicting Punishments of Life and Death, or other less Penalties, for the Breach of the *Laws* of *Nature* or the Transgression of the *Civil Laws* of the *Commonwealth*, is originally derived from God, as being that Power with which God, in the State of Nature, hath intrusted all Masters or Heads of separate Families, and this not as Fathers, but as Masters.

6. That since all Kingdoms and Commonwealths at this day do owe their Original either to the *Election* of the People, or to *Usurpation* or *Conquest*; God doth not now by the ordinary Course of his Providence confer this *Divine Authority* on any Persons whatsoever, so as to give them a Right to the People's *Allegiance* without the People's *Consent* first had, or else an owning of their Titles by a subsequent voluntary Submission to them.

M. I

M. I grant indeed, that you have with great Labour, and some appearance of Reason too, endeavoured to prove these Principles you have here laid down; yet however, tho' the *five first* of them should be true, I have a great deal still to except against the *last*, if you please to hear me. For I think I can shew you a great many evil Consequences that will follow from this Principle, of making the *Consent* or *Submission* of the People at all necessary to the conveying of a Supreme Power, or of that Divine Authority which you grant to be derived from God himself, on all Monarchs and Supream Magistrates in Commonwealths.

F. I pray give me leave a little to interrupt you. I know very well what this evil Consequence is, of supposing the *Consent* of the People as a Means at all necessary for the conveying of this Divine Authority; that is, in plain *English*, because it will destroy your darling Doctrine of PASSIVE OBEDIENCE and NON-RESISTANCE; therefore if it be so, pray let us rather fall presently to the Question it self, than argue by Consequences; which if we should go that way to work, I have my Consequences likewise to urge, some of which I have given you already. Therefore, if you please, let us begin a fairer way, and hear me propose those Heads, in which I doubt not but we do both agree; and then I will bring it to the main Case or Question, in which perhaps we differ.

M. I confess I had somewhat more to say, which would have tended to prove this Doctrine of *Non-resistance*; but since you are pleased to propose another Method, which you better approve of, I am ready to comply with you: Therefore, Sir, go on in what way you think fit.

F. I shall then in the first place lay it down for a Principle (which I suppose you will not deny) that all *Civil Power*, being from God, it was principally instituted by him for the *Peace*, *Happiness*, and *Safety* of Mankind; that is, of all the Subjects who are to live together in a Commonwealth or Civil Society.

2. That all Kings or Supreme Magistrates are likewise secured, by God's Authority, in those due Rights and Prerogatives, which are necessary for their well discharging this great Trust or Duty which God requires of them, and in consideration of which the People at first *elected* or submitted themselves to them.

If therefore you grant, as I suppose you will, these two reasonable Propositions, the Question will amount to no more than this: Whether, if the Supreme Power, in any Kingdom or Commonwealth, so far abuses this Trust, which God by the People hath committed to them, and instead of preserving and defending the Lives, Liberties, and Estates of their Subjects, they manifestly go about to destroy or grievously to oppress them, by making them, instead of Subjects, meer Slaves and Vassals; the Question, I say, then is, whether, if such general Violence or Oppressions be committed upon the whole People, or so considerable a part of it, as that the Safety and Well-being of the *Commonwealth* cannot in any likelihood subsist without it; the *People*, or the most considerable part of them, may not (in case their Lives, Liberties, and Persons are unjustly assaulted and oppress'd by the Officers or *Standing Armies* of the Prince, or other Supreme Powers) for their own defence take up Arms to defend their Lives, Liberties, and Estates, against such an armed Force and Violence. Where, by the way, I desire you to take notice, that I do here absolutely disclaim *all Resistance* of, or Self-defence against Civil Authority, or the Officers commissioned by it, by any *private single* Person, whether such Power be exerted according to Law or not, or else abused in some cases to the Hurt or Destruction of such single Person only. So that I suppose this *Resistance* to be lawful only in case of a *general Destruction*, or *intolerable Oppression*, of the whole People, or at least a very considerable Part of them, and those that are in the chiefest Places of the Administration.

M. I confess, the Doctrine of *Resistance*, as you have put it, seems at first somewhat plausible, and to tend to the common Good and Preservation of the People or Civil Society. But let me tell you, I am of opinion, that whenever it comes to be put in practice, it proves (like the other *Speculations* of *Commonwealths-men*) more hurtful than beneficial to the common Safety and Preservation of the People; and consequently more destructive to the main Ends of Government, than conducive to the Good and Happiness of Mankind; and last of all, that such *Resistance* cannot well be maintained or executed without the Deposing or absolute Destruction of the Prince, or other Supreme Magistrates, whatever may be pretended to the contrary. And indeed it is almost impossible to suppose, that any Monarch or Supreme Magistrate should ever (unless they were stark mad) purposely go about

about to kill or destroy their Subjects, in the Multitude and Safety of whom consist his chief Strength and Riches. And you may as well tell me, that a Shepherd, whilst he is in his right Wits, should go about to kill or destroy his Flock, as that a Monarch should wilfully intend to kill or destroy his People.

To conclude, since the People must be, in all Cases of *Tyranny* or *Oppression*, their own *Judges*, and *Executioners* too; there is no *Rebellion* so rank and wicked, that this Pretence of a *Self-defence* of Men's Lives, Estates, and Liberties, may not justify; whereas indeed it is contrary to all natural and Civil Justice, for the injured Party to be his own Judge and Executioner too: For then the other Side may pretend to the like Right, and the Trial must be referred to Force and Arms, in which Contention if the People are overcome, they are certainly reduced to a worse Condition they were before; but if the Prince or Supreme Magistrates have the worst on't, the Civil Power then in being is absolutely ruined: So that whether the People or Magistrate overcome, the State of both of them is very deplorable; besides divers other evil Consequences of this Doctrine, which I shall defer, till I hear what you can say to what I have now urged against your Opinion.

F. You have made a very plausible Speech, in setting forth the dreadful Consequence of this Doctrine of Resistance in any case whatsoever; and I confess, if what you lay down be true, *viz.* that such Resistance always brings along with it greater Misery upon a People than what the utmost Violence and Oppression of Princes can produce, then your Consequence would be also true, that such Resistance is never to be practised upon any account whatsoever. So, on the other side, if that be not true, neither will your Consequence signify any thing.

I suppose you will not deny, but that there may be such a thing as a *Tyrant*, and that *that part* of Mankind who live under him may be sensible of his *Tyranny*; or else the Definition which K. *James* I. gives us of a *Tyrant*, in a Speech which he made to the Parliament in 1603. would be altogether in vain. But the Words are so fit for this purpose, that I will read them to you out of his Works. *I do acknowledge, that the special and greatest point of difference that is between a rightful King and an usurping Tyrant, is this: That whereas the proud and ambitious Tyrant doth think his Kingdom and People are only ordained for the Satisfaction of his Desires and unreasonable Appetites; the righteous and just King doth, by the contrary, acknowledge himself to be ordained for the procuring of the Wealth and Prosperity of his People.* And so likewise, in another Speech he made to the Parliament, he hath this memorable Passage: *That a King governing in a settled Kingdom leaves to be a King, and degenerates into a Tyrant, so soon as he ceases to rule according to the Law.* So that since it is plain, that the People may judge when they have a *Tyrant* instead of a *King* to rule over them, and that under such a *Tyrant* the Condition of the People may be very deplorable; the Question still remains, what is best for them to do in this case? Whether it be better for them, or they are obliged by the Laws of Reason and Nature, patiently to submit to it? or else, if they can, either by their own Force, or the Assistance of a foreign Prince, to cast off the Yoke? And I think I may still maintain, that they may do it, notwithstanding what you have yet urged to the contrary.

In the first place therefore, tho' you count it an almost impossible thing to suppose, that a Prince or Monarch would ever go about to murder or destroy his Subjects; yet as incredible as it is, I can give you several Examples out of History, both antient and modern, that some *Tyrants* have been so brutish, as not only to endeavour it, but actually to put it in practice. Of the first kind is that of *Caligula*, whom *Suetonius* mentions to have wish'd, that all the People of *Rome* had but one Neck, that he might cut it off at once. The other is of *Nero* (in the same Author, as also in *Tacitus*) who set the City of *Rome* on Fire, and consequently would have burnt all the People in it to please his Humour, and that he might sing his *Ballad* of the Destruction of *Troy* the more naturally whilst it burnt. A third Example I find related in *Mocquet's* Travels into the *East Indies*, of a certain King of *Pegu*, about an hundred Years ago, who, by the persuasion of some of his *Diabolical Priests* or *Magicians*, took such an Aversion to his Subjects, that he was resolved to destroy them, and therefore forbid them to sow their Lands for two or three Years, by which means a great part of them died of Famine, or were forced to devour each other. And in such cases as these, I suppose, the Laws of Nature and Reason will justify *Self-defence* in the *People*; and sure it had

Vid. Mocquet's *Travels, lib.* 4. *p.* 333.

been lawful for the People of *Rome* to have resisted *Caligula's* Guards, if he had gone about to put his wicked Wish into execution; or likewise to have resisted or put to death those Incendiaries they found firing the City, tho' they might have had the Emperor *Nero's* Commission for it: So likewise sure it would have been as lawful for the People of *Pegu* to have resisted those whom the Emperor might have sent to hinder them from ploughing and sowing their Lands. And that I am not the only Man of this Opinion, I desire you to consult what *Barclay* hath, in his Treatise *contra Monarchomachos*, which he writ against *Buchanan*, *de Jure regni apud Scotos*, and the Author of *Vindiciæ contra Tyrannos*; where, tho' he be a most zealous Asserter of the *unlimited* and *irresistible Power of Princes*, yet in his third Book, Chap. 8. he speaks to this effect; the Sense of whose Words, as near as I can, I will give you in *English*.

"Now if any one should say, But must the People always yield their Throats "to the Fury and Cruelty of *Tyrants*? Must they patiently permit their Cities to "be destroyed by Hunger, Fire or Sword, and their Wives and Children to be "exposed to the Lust of a *Tyrant*, and also themselves to be brought into the ut-"most Dangers and Miseries of Life? Must *that* be denied to them, which is "the *Right of all Animals* by Nature; that is, that they may repel Force with "Force, and defend themselves from Injury? To this it may easily be answered, "that *Self-defence*, which is of *natural Right*, ought not to be denied to the Peo-"ple: And therefore if the King doth not only exert his Hatred against some "single Persons, but also shall go about to destroy the *Body* of the *Commonwealth*, "of which he is Head; that is, shall exert his Hatred against the whole Peo-"ple, or some considerable Part of them, by an horrid and intolerable Cruelty or "Tyranny, there is a Power in the People, in this case only, of *defending* itself, "but not of *invading* the Prince, or of *revenging* the Injury given; neither of de-"parting from their due Reverence, because of the Injury receiv'd: In short, it "hath Right only of repelling a present Force, but not of revenging a past Injury; "for one of them indeed is from Nature, that we should defend our Lives and "Persons from Injury; and therefore the People may be able to prevent an Evil "before it be done, but cannot revenge it upon the King after it is done. There-"fore the *People* hath this Right more than a *private Man*, that he hath no other "Remedy left him but Patience; whereas the People, if the *Tyranny* be intole-"rable, may still resist, tho' with Respect.

In all which this Author hath there said we may easily understand his Meaning, unless it be in this of resisting Force with *Respect* and *Reverence*: For I cannot understand how a Man may fight against his Prince with *Reverence*, or give his Guards a Knock over the Pate, or a Cut in the Face, with *Respect* to the Prince's Authority. But the Reason is plain why the People may act thus, because when a Prince once goeth about to destroy and make War upon his People, he doth not act then as a *Monarch*, but like a *Cut-throat*, and Enemy to the Commonwealth: And no Man can imagine a Will to destroy and to protect the People can at once subsist in the same Person.

M. But pray give me leave to interrupt you a little. I grant indeed, that by the Political Laws of any Government, which are made to secure the Rights of the Subjects in their Lives and Fortunes, no Prince can or ought to take away his Subjects Lives or Estates contrary to Law; yet by the IMPERIAL LAWS in every Government, and by the *Laws* of the *Gospel*, which (as I shall hereafter shew) establish those Laws in all perfect Governments (and particularly in the *English*) all these Rights legally belong to the Civil Sovereign, especially to be accountable to none but God, to have the sole Power and Disposal of the Sword, and to be free from all coercive and vindicative Power, and from all Resistance by Force. It is by these *Common Laws* of Sovereignty, that the Gospel requires *Passive Obedience*, which is but another Name for *Non-resistance*: These Laws are in eternal force against the *Subjects* in defence of the *Sovereign*, be he good or evil, just or unjust, Christian or Pagan; be he what he will, no Subject or Number of Subjects whatsoever can lift up his or their Hands against the Sovereign, and be guiltless by these Laws. Therefore for the *Subjects* to bear the Sword against their *Sovereign*, or to defend themselves by force against him or his Forces, is against the *Common Laws* of Sovereignty; and by consequence *Passive Obedience*, even unto Death, becomes a Duty in Sovereign Governments, by virtue of those Laws, and we are not to resist them upon any pretence whatsoever; but therefore all Subjects are

H. 7. chap. 10. *p.* 203.

bound

bound to ſuffer Death wrongfully, rather than to reſiſt them upon any pretence or account whatſoever. So that let *Popiſh* Writers (tho' never ſo moderate) ſay what they pleaſe concerning the *Lawfulneſs of Reſiſtance* in ſome caſes, yet we of the *Church of England* have learned better things from the *Scripture* and the Examples of the *Primitive Chriſtians*, which we think our ſelves obliged moſt ſtrictly to obſerve. And therefore in relation to our own Government, and the preſent State of Affairs, I ſhall reduce all that I have to ſay againſt *Reſiſtance* of the King, or thoſe commiſſioned by him, into this *Syllogiſm*: Not to be reſiſted by the Subjects is an inſeparable Right of all Sovereign Power: But the King is here the only Sovereign Power. *Ergo*, the King is upon no pretence whatſoever to be reſiſted by his Subjects. So that, not to quarrel any longer about Words, *Non-reſiſtance* is the ſame thing with *Paſſive Obedience* and *Submiſſion*, and by conſequence theſe are required by the IMPERIAL LAWS of the Government. Therefore whatſoever the *Imperial Laws* of the Government require of its Subjects, if it be not contrary to God's Laws, they are bound to perform it. But *Paſſive Obedience*, or patient ſuffering of Injuries from the Sovereign, is not forbid by God's Laws; And therefore Subjects are bound to perform it, where it is required by the *Imperial Laws*.

F. I ſhall forbear to ſay any thing, as yet, concerning what Doctrines the *Scriptures* teach, or the *Primitive Chriſtians* practiſed concerning this matter, becauſe I deſire to diſcourſe that Queſtion apart from this of the Laws of Nature or Reaſon, which we are now upon: Therefore I muſt tell you, that tho' this new Term of *Imperial Law* of *Nonreſiſtance* may ſound very prettily to their Ears who mind Words more than Senſe; yet I muſt freely confeſs, that I am altogether a Stranger to this Notion of *Imperial Laws*, as alſo of the Diſtinction you make between the *Imperial* and *Political Laws* of this Kingdom: And if by *Imperial Laws* you mean thoſe of the *Roman* Empire, I never knew that thoſe Laws had any thing to do in *England* before, but always ſuppoſed the *Political Laws* of our Country to be the only Meaſure of the King's Prerogative, as alſo of the Subjects Obedience and Subjection. Nor do your own *Civil Laws*, by as much as I know of them, make any difference between the *Imperial* and *Political Laws* of the Empire; for by the one, as well as the other, the Civilians underſtand ſuch *Laws* or *Edicts* of the Emperors, which, with the Approbation of the Senate, were made for the Peace and Well-government of the Commonwealth; but I never yet heard of any *Imperial Laws*, whereby the Emperor declared, that he had a Right to plunder or murder all the Citizens of *Rome*, or that they believed they were obliged to *ſuffer* by your *Imperial Laws* without any Reſiſtance. I am ſure the Senate and People did not believe, that the Emperor had any ſuch Authority, when they declared *Nero* and *Maximin*, for their intolerable Cruelty, not only Enemies of the Commonwealth, but of Mankind. But if by theſe *Imperial Laws* of *Nonreſiſtance* you mean no more than what you laid down in your Syllogiſm, that it is an inſeparable Right or Prerogative of Sovereign Powers, not to be reſiſted by their Subjects, when you have proved this Propoſition by the Laws of Nature and Reaſon, I ſhall then believe it. But as for your Concluſion, it being founded upon theſe Premiſes, it needs no Confutation; for if the *Imperial Laws* of Government do not require your *Paſſive Obedience*, then Subjects are not bound to perform it. And to ſhew you the Falſeneſs and Abſurdity of this Aſſertion, that whatſoever the *Imperial Laws* of any Government require of its Subjects, if it be not contrary to God's Laws, they are bound to perform it. Inſtead of *Paſſive Obedience*, or patient ſuffering of Injuries, let us inſert, *To give up to the Sovereign all our Civil Properties and Eſtates, if demanded by him, is not* forbid *by God's Laws; and therefore Subjects are bound to perform it, whenever it is required by the Imperial Laws*: For certainly the *abſolute Diſpoſal* of the Eſtates of the Subjects is as unſeparable a Prerogative of Sovereign Power as *Irreſiſtibility* it ſelf; as I think I am able to prove, if you think fit to diſpute that Queſtion.

But at preſent I ſhall only confine my ſelf to confute the *Major* in your *Syllogiſm*. In the firſt place therefore, though I do grant what you lay down for a Ground, to be true, That it belongs to *Sovereign Powers* to be *accountable* to, or *puniſhable* by, none but God; yet, I ſuppoſe, *Reſiſtance* of their Violence and *Tyranny* may very well be performed by the *People*, without calling them to a *Judicial Account*, or erecting a *Tribunal* for that purpoſe: Calling to an Account, and Puniſhment, are Acts of Authority of Superiors over Inferiors; but *Reſiſtance* for Self-defence

is a *Right* of *Nature*, and which no Man, by entering into *Civil Government*, ever parted withal, but out of Conſideration of a greater Good to be obtained thereby, (*viz.*) his own greater Security, together with the common Good of that civil Society, whereof he is a Member; which, when by the Prince's Violence, it is once like to be wholly loſt, his *natural Right* of *Self-defence*, for the preſervation of himſelf and Family, again takes place: Nor doth he then reſiſt the Supreme Powers as ſuch, but as Murderers and Cut-throats, who by going about to deſtroy the People have already loſt all that Right they formerly had. And of this Opinion is that moderate *Romiſh* Author, *Barclay*, before cited, who in the 16th Chap. of the Book laſt quoted, hath this remarkable Paſſage.

"What then? Can there *no Caſes* happen in which it may be lawful for the "*People*, by their *own Authority*, to riſe up, and *reſiſt* a King governing *Tyrannically*? His Anſwer to this Queſtion is, there are certainly *none* as long as he "continues *King*: for the Scriptures forbid it, which ſay, *Honour the King*, and "*he who reſiſteth the Power, reſiſteth the Ordinance of God.* Therefore the People "can have no Power againſt him, unleſs he committeth ſomething, by which he "may *ceaſe* to be *King*; for then he himſelf *abdicates* his Kingſhip, and becomes "a *private Man*; and by this means the *People* being made *free*, that Right re-"turns to them, which they had before the King was made: But there are but "few Facts of that Nature, which can produce ſuch Effects. And I cannot, "when I think of it, find more than *two Caſes*, in which a King doth *ipſo facto* "make himſelf *no King*, and thereby depriveth himſelf of all Honour, Regal Dig-"nity and Power; (which alſo *Winzerus* takes notice of.)" One of theſe is, if he *deſtroys* his *Kingdom*, and then give us the Examples of *Nero* and *Caligula*, as I have already done; and next proceeds to this purpoſe, that when any King deſigns, and doth ſeriouſly endeavour "to put this in practice, he caſts off all care and de-"ſire of governing; and therefore thereby loſes his Empire over his Subjects, "as a Lord of a Servant loſes his Dominion over him, by giving up all Care, "and Government of him." And of this Opinion likewiſe are * *Grotius* and *Puffendorf* †, the two beſt, and moſt learned Writers on this Subject. Who do not think it "inconſiſtent with the Rules of the Goſpel, for Subjects to reſiſt the King, "if with a *hoſtile Mind* he ſeeks the *Deſtruction* of his *People*; for, ſays the former, the Will of commanding and deſtroying cannot conſiſt together: And "therefore he who profeſſes himſelf an *Enemy* of the *whole People* does thereby "*abdicate* the Kingdom; but that can ſcarce ſeem to happen in a King in his "right Wits, and who commands only one Kingdom. But if he commands more "Kingdoms, it may ſo happen, that he would deſtroy the People of one Na-"tion to gratifie the other, that he may *there make Colonies of them.*" And this, I ſuppoſe, *Grotius* ſpoke in relation to the King of *Spain*, who (they ſay) had declared, that if he overcame the *Dutch*, then in Arms againſt him, he would ſell the People for Slaves into *America*, and people the Country with *Spaniards*.

* *Lib.* 1. *c.* 4. § 7. 11.
† *Lib.* 7. *c.* 8. § 6. 7.

M. You very much miſtake me, if you think, by *Imperial*, I meant the *Roman* Laws, but only the *common Laws* of *Sovereignty*, which, though they deſtroy no Man's natural, or civil Rights, yet both grant, and confirm unto the legal Sovereign, in every Government, the *Eſſential Rights* of Sovereignty, of which I take *Non-reſiſtance*, not only for Wrath, but Conſcience ſake, to be one of the *chief*. And therefore it were much better to venture the *utmoſt* that a *Tyrant* can do towards his *People* by deſtroying them, than to give the leaſt *inlet* to Rebellion, by ſuppoſing the *People* may in *any* caſe whatſoever *reſiſt* their Prince. For granting the worſt that may happen, that a Prince once in a thouſand Years ſhould be ſo wicked and malicious, as to go about to deſtroy his People, yet he could ſcarce find Means and Hands enough to bring it about: And admit he ſhould deſtroy, by his *mercenary Forces*, thirty or forty thouſand of them, it were better *all theſe* ſhould periſh, than that the *Nation* ſhould be involved in *Civil War*, and the *Prince's Perſon* and Government deſtroyed by *Reſiſtance*. And therefore in all Governments whatſoever, whether *Monarchies* or *Commonwealths*, there muſt be an *abſolute Truſt* placed by the People in one, or more Perſons, which Truſt they can neither recall when they will, nor yet reſiſt upon the Non-performance of it. And therefore it is a Miſtake, when you affirm with thoſe Authors you have quoted, that a King, or other Supreme Powers, can ever loſe their Right, by going about to deſtroy the People, much leſs when they only think their Liberties in danger; and I have ſeveral Reaſons to give you for my Aſſertion.

H. J. Ibid.

As

As first, from the *common Notion* of a *Trust*; for what is more generally under- *V. J. R. p. 6.*
stood by trusting another, than that we lodge our Concerns with him, and put them out of our Disposal? When I trust a Man with my Life, or Fortune, all Men agree, that I put it in his Power to deprive me of both: For to deliver any Property to another, with a Power of Revocation, is to trust him (as we say) no farther than we can see him. He that can recover a Sum of Money he hath deposited, when he pleases, to speak properly, hath it still in his Custody, and trusts his Friend no more than he doth his own Coffers; and therefore, if we consult our own Thoughts, we shall find, that a *Trust* naturally implies an *entire Reliance* upon the Conduct and Integrity of another, which makes us resign up our Liberty or Estate to his Management, imagining them safer in his Hands, than in our own. In short, a Trust, where there is no third Person to judge of the Performance, (as in these Facts between Subjects, and Sovereign, there is not) I say, such a Trust includes a *Translation* of a *Right*, and in respect of the Irrevocableness of it, is in the Nature of a Gift. So that there seems only to be this difference between them, that a *Gift* ought to respect the *Benefit* of the *Receiver*, whereas a *Trust* is generally made for the *Advantage* of him who *conveyed* it.

And in every civil Society, or Government, under Heaven, that doth not de- *B. D. F. p. 8.*
pend upon another, there must be an *absolute* and *uncontroulable Power* fixed *somewhere*, which may *irresistibly* dispose of the Lives, Estates and Persons of the Subjects within that civil Society, or Government. For if every Man be left at Liberty to dispose of his own Estate and Person, as he pleases himself, then can he promise himself no Protection, but what his own natural Force will afford him; and that will certainly be overpowered at one time or other by others. Without this Trust there can be no Justice administred within the civil Society; for if every particular Man may be Judge in his own Case, the Right will certainly be asserted on both sides, tho' it really can be but in one: No Malefactor will ever condemn himself, nor submit to Justice, if he can, and may resist; and if a War happen, every Man will be for saving his own Goods from the Expence, as his own Person from the Danger of it; and the Consequence must be, that that *Civil Society* must perish either by *internal* Disorders, or *external* Force.

Therefore this Power is, and must be in one Person, or Body of Men in every *Id. pag. 9.*
Civil Society, and is also *indivisible*: For supposing that it should be divided in the same Civil Society into two, or more Parts; as between two Men, and two Senates, or Councils, without any dependance upon each other, or any third Power, the Consequence must needs be, that they differing, and opposing one another, and having no lawful Power fixed in either of them to oblige the other to submit, must have recourse to Force and Arms: So that this Civil Society can never rest 'till this Supreme Sovereign Power be reduced again into one. And if you suppose this *Power* of *judging*, and resisting in the *People*, or Multitude, the matter is *ten times worse*; that being a blind, and heady Monster, easily provoked upon slight Occasions, commonly judging false, even in its own Concerns, and as implacable in its Rage, as unsatiable in its Revenge.

To conclude: Whether this Supreme Power be in a single Person, or in a few, or in all, where ever it is lodged, none must oppose, none must resist it; nor can any Man assure himself of more Justice, or better Usage from a *Senate*, or a *Multitude*, than from a *Prince*, or *single Person*. So that this Inconvenience of being liable to have our Lives sometimes taken away, our Persons injured, and our Estates oppress'd by the evil Management of our Governors, is one of those humane Miseries, that, by the Corruption of Men's Nature from the Fall, took Possession of the World, and can never be purged out of it 'till the final Conflagration. And therefore the Advice of *Cerialis* in *Tacitus* is always to be remembred, That "Tyrants and evil Princes are to be born with, as immoderate Rains, "and unkind Seasons, and amends may be made by a better Successor:" Since Resistance will not cure, but only inflame the Distemper.

F. You have made a long Speech, wherein I see you have heaped together all that *Wit* or *Interest* can produce on the behalf of *Tyranny*; though I must confess, I did not expect to find you, of any Man, so zealous an Advocate for it. But I forgive it, as long as I really believe, that only a mistaken *Conscience*, and not any private Interest, prompts you to it. But that I may take your Speech to Pieces in order to answer it: In the *first place*, as to what you say concerning a Trust, I think you are under a very great Mistake. For no Man, either in a Civil State,

State, or in that of Nature, ever yet ſo truſted another, as that, if he abuſed his Truſt, he had not reſerved to himſelf a *Right of Appeal*. Under all Civil Governments this is notorious, ſince it is one of the main Buſineſſes of *Supreme Courts* of Juſtice, upon *Complaints*, or Appeals, of *Breaches* of Truſt, to call the *Truſtees* to an *Account*, and force them to make *Reſtitution* for the Wrongs they have done. And whereas you ſay, that in the State of Nature, where there is no third Perſon to judge of the Performance, ſuch a Truſt includes a Tranſlation of Right (as in theſe Facts between Subjects and Sovereigns:) This is likewiſe a Miſtake, though it be true, that in that State, if I truſt a Man with my Life and Fortune, I put it in his Power to deprive me of both; and that this Truſt naturally implies a Reliance upon the Conduct and Integrity of another, which makes me reſign my Liberty, or Eſtate, to his Management; yet doth it not therefore follow, but that upon the abuſe of this Truſt, I may have a Remedy againſt him, who thus breaks this Truſt I have ſo repoſed in him. And when there is *no third Perſon* to *judge* between me and my *Truſtee*, I my ſelf am the *ſole Judge* of the Wrong he doth me; and may not only *turn him out of his Truſt*, if I find he abuſes it, but may alſo force him to make me *Satisfaction* for the Wrong he hath done: So that, if in the *State of Nature* I truſt a Man with a *Bag of Silver* to keep for me; if he either *imbezels*, or runs away with it, I may certainly force him to make me *Reſtitution*, or elſe enter into a *State of War* with him 'till he do: And where there is no *common Power* over us to whom we can *Appeal*, this *Difference* can no way be *decided* but by the *Sword*. And therefore *no Truſt* (as in thoſe mutual Facts between Subjects and Sovereigns) can be *irrevocable*, or include a *perfect Tranſlation* of a *Right*; and *no Truſt* can ever be ſuppoſed to be given but with this *tacit Condition*, that the Truſtee doth not *abuſe* it. And you yourſelf have made a ſufficient *Difference* between a *Truſt*, and an *abſolute Gift*; but granting that a Gift reſpects the benefit of the Receiver, whereas a Truſt is for the Advantage of him who conveys it. From whence it muſt neceſſarily follow, that if this Truſt be for his Advantage, he hath ſtill an *Intereſt* in the thing *truſted*; and conſequently may call the *Truſtee* to an *Account* in the *State of Nature*, and upon Satisfaction denied, *appeal* to God himſelf by *Battel*, or *Combat*. So that if the *Supreme Powers* are but *Truſtees* of the *People*, they may be *reſiſted*, when by going about to *deſtroy* them they *break their Truſt*.

But as for the *other part* of your Argument, that in all *Civil Governments* under Heaven, there muſt be an *abſolute and uncontroulable Power* fixed *ſomewhere*, that may *irreſiſtibly* diſpoſe of the Lives, Perſons, &c. of the Subjects. This, tho' it ſeems a better Argument than the former, yet is all one in effect; for the Queſtion is ſtill, *Whether the People ever repoſed ſuch an abſolute Power in their Supreme Magiſtrates, or not?* I grant indeed, that as far as they act as the *Nature* of Civil Power requires, they are *not by any means to be reſiſted*. But the Queſtion ſtill is, Whether, when a Prince makes *War* upon the *People*, or goeth about to *deſtroy* them, there is then any *Civil Power* in being; and whether the *Government* be not already *diſſolved*, ſince the *main Ends* of Government, *viz.* the Good and Preſervation of the Subjects, are quite deſtroyed. And now pray tell me which is moſt ſuitable to that *prime Law of Nature*, the Endeavour of the Good and Happineſs of Mankind, that a *whole Nation* ſhould be enſlaved, or deſtroyed by the *boundleſs Will* of a *Tyrant*, or that *Rulers* ſhould be ſometimes reſiſted when they grow *intolerably Tyrannical*, and abuſe their Power, to the *total Deſtruction* of the Lives and Properties of their Subjects. So then, if ſuch an *abſolute Arbitrary* Power in Princes, or States, can never conſiſt with the *main Ends* of Civil Society, the Peace and Happineſs of the Subjects, it is plain, that whenever they are reduced to ſuch a State, they will look upon themſelves as again in the *State of Nature*: Nor would they have ever quitted their *natural Freedom*, and tied themſelves up from providing for the Security of their Lives and Properties, by ſuch means as they might before have juſtly exerciſed, had it not been to obtain theſe Ends with much greater Certainty by entring into *Civil Society*, and by *ſtated Rules* of Right and Wrong, to ſecure their Lives and Properties with their future Peace and Quiet, by ſurer means, than they could hope for in the *meer State of Nature*.

For it cannot be ſuppoſed that the People would ever confer ſuch an *arbitrary unlimited Power* on one Man, or many, over their Lives and Eſtates, that they might

might take them away without any just cause; for this were to put themselves into a worse Condition than the *meer State of Nature*, wherein they had a Liberty to defend their just Right against the Injuries of others, and were upon equal terms of Force to maintain it, whether invaded by a single Man, or many in a Combination: Whereas by supposing they have thus given up themselves to the *absolute Arbitrary Power* and *Will* of a single Person, they have wholly *disarmed* themselves, and only *armed* him to make a Prey of them whenever he pleases; he being in a much worse Condition that is exposed to the *Arbitrary Power* of one Man who hath the Command of 100000 Men, than he that is exposed to the *Arbitrary Power* of 100000 single Men, no Body being secure that his Will who hath such Command, is better than that of other Men, tho' his Force be 100000 times stronger. *T. T. G. part 2. p. 359.*

To conclude, granting a *Supreme Power* to be plac'd somewhere, either in a single Person, or in many, yet it can by no means be *absolutely Arbitrary* and *Irresistible* over the Lives and Fortunes of the People; for their *Authority* being (as I have already proved in the former Conference) no more than that Power which God hath granted to every particular Head of a Family, and other Freemen at their own disposal, for the security of their own Persons, and the common Good of those whom God hath intrusted to their Charge, they cannot confer upon the *Supreme Magistrate* any more Power than what God hath conferred upon them before, and and so can be no more than *those Persons* had in the *State of Nature*, before they enter'd into Society, and before they gave up their Power to these *Supreme Magistrates*, viz. that only which God had before trusted them withal. Now (according to your own Principles) *no Man* is trusted by God in the *State of Nature* with an *absolute Power* over his own Life, much less to *destroy* or *take away* the Life or Property of another, and therefore cannot convey any such Power to those he would entrust with it. So then if a Man cannot subject himself to the *Arbitrary Power* of another, neither hath he in the *State of Nature* such an *Arbitrary Power* over the Life, Liberty or Possessions of another, but only as much as the Law of Nature gave him for the preservation of himself, and the common Good of Mankind; this is all he doth, or can give up to the *Commonwealth*, so that if it can have no more than this, its *Power*, in the utmost bounds of it, is still *limited* to the *publick Good* of the *Civil Society*. *Ibid. p. 355.*

All which, if duly considered, the rest of your weaker Arguments are easily answered: For supposing but one Prince in 1000 Years so *wicked* as to go about to *destroy* his People, it will then, whenever it happens, be as much their *Right* to *defend* themselves, as if it were to happen every Year. And tho' you assert he could scarce find Means or Hands to bring it about; yet that makes nothing to the purpose; for if he hath *no Right* to *destroy* 30 or 40000 of the Subjects (as you suppose he may by his *Mercenary Forces*) then that 30 or 40000 may *defend* themselves if they can: For when once a Prince hath thus enter'd into a *State of War* with his People, who can tell when or where it will end, or can assure himself that he shall not be the next Man that shall be *destroyed*? And it is very pleasant that you allow the Prince this Power of *Murdering to avoid Civil War*; as if there could be no War begun unless there be Fighting on both sides; whereas Mr. *Hobbs* himself acknowledges, the very assaulting or setting upon any Man, to be entring into a State of War with him: And sure, I think, to fall upon the People without Cause, and killing 30 or 40000 of them, is entring into a State of War, or else nothing is: And therefore you mistake the Question, when you argue from the *Indivisibility* of the *Supreme Power* that it must not be *resisted*; for the Question is not here, whether it be *divisible* or not, but whether it be not *absolutely dissolved* by thus entring into *a State of War* with the People, whom all Civil Magistrates are supposed to protect when they assume the Government.

Nor doth this give any countenance to Malefactors or other single Persons, to rise in Arms and defend themselves against the *Supreme Powers*, when they have offended against the Laws, or that they think themselves injured by the undue execution of them; since such *Abuses of Power* cannot suddenly, or upon every slight occasion, *disturb* the *Government*. And in the case of *Malefactors*, the *Supreme Power* is still sure to have all the rest of the People on its side, for their own Security: And in case of some *Murders* or *Oppressions* committed by such *Supreme Magistrates* on the Lives or Estates of some private Persons, tho' I suppose that even such private Men have a Right in the *State of Nature* to *defend* their Lives, and to

recover

recover by *Force*, what by *unjuſt Force* is taken from them; yet this *Right* muſt ſtill give place to the publick Peace and Safety of the *Commonwealth*, whereof they are Members, which muſt not be diſturbed for the ſake of a *few*: And of this the
Ibid p. 429. People themſelves are ſo ſenſible, that it is almoſt as impoſſible for a few *oppreſſed* Men to diſturb the Government, where the *Body of the People* do not think themſelves concerned in it, as for a *raving Mad-man* or *heady Malecontent* to overturn a *well ſettled State*; the People being as little apt to follow the one as the other. So on the other ſide, whenever the People are once convinced that their *Governors*, inſtead of *protecting*, go about to *deſtroy* them, it is as impoſſible for any Man to perſuade them not to take up *Arms* and defend themſelves againſt them, if they are able to make *ſufficient Reſiſtance*. And therefore tho' I ſo far agree with you, that ſome Oppreſſions and Violences may be practiſed in all *Civil Governments* whatſoever, ſince ſuch Abuſes will continue as long as Men are Men; yet doth it not therefore follow that the *Supreme Powers* muſt always be born withal and never reſiſted, no not when they go about to deſtroy the whole Body of the People.

M. But pray tell me, is it not a very miſchievous and unjuſt thing, that *Subjects* ſhould be both *Judges* and *Parties* too in their own Caſe; ſince they may pretend that the King goeth about to deſtroy or enſlave them, when really he does not deſign any ſuch thing; and would not this bring all things into *Anarchy* and *Confuſion*? I ſhewed you the fatal Conſequences of this at the beginning, but you have not yet thought fit to anſwer them.

F. I beg your Pardon, Sir, I have been ſo taken up with anſwering the *main Arguments* that you have propoſed againſt this *Right* of *Reſiſtance*, that I have not had time to conſider this Objection, which is but a Conſequence thereof: And therefore in the firſt place give me leave to ask you this Queſtion; Suppoſe you were Maſter of a ſeparate Family in the *Indies*, and a Neighbouring Prince or Cacik of the *Indians* ſhould come to kill you, or to drive you out of your Plantation, might you not *defend* your ſelf, becauſe you are both *Judge* and *Party* too in your own Caſe? Or ſuppoſe you ſhould ſo far abuſe this Power of *Self-defence*, as to pretend this Neighbouring Prince was coming to aſſault you, when he really was not, and ſhould therefore (to prevent it) ſet upon him firſt, and murder him and his Followers; muſt your *Abuſe* of this *Right*, which you have by the *Law of Nature*, be a ſufficient Argument, that neither you, nor any Man elſe in the *State of Nature*, ſhould ever for the future exerciſe this *Right*? ſo neither will the *Abuſe* of theſe *Rights* be a ſufficient Argument againſt the *Right* of *Self-defence* againſt the *Supreme Powers*.

M. I grant indeed they are not in the *State of Nature*, but it is much otherwiſe after People are entered into a *Civil Society*, or *Commonwealth*, and that upon your own Principles; for then they have given up all that *Equality*, which you ſuppoſe between Men in the *State of Nature*: For ſuppoſing what you affirm ſhould be true, That *Civil Government* at firſt began from the whole Body, or major part of the People's making over *all their Right* of Governing themſelves to one Perſon, or more, upon *Conditions* of being *protected* in their Lives and Eſtates; they muſt likewiſe make over *all their Right* of *Judging* for themſelves what *means* are neceſſary for their *common Good* and Preſervation; after which *transferring* of their Power, they can never have *any Right* to meet again in a Body, either by themſelves or their Repreſentatives, to judge of theſe *Breaches*, or the Tranſgreſſions of thoſe *Conditions* which they at firſt propoſed and *agreed upon* with ſuch Princes or Governors. And when the *People* come once to multiply into a *Nation*, it is abſolutely impoſſible for them ever to *meet* altogether again, and give their *Judgment* of the good or evil Conſequence of the Monarchs Actions, or to come to any *Reſolution* upon them; ſo that their Opinion can never afterwards be known, otherwiſe than by the *Murmers of particular Perſons*, which none can certainly know neither, unleſs they could ſpeak with every *individual Perſon* of that Kingdom, which is impoſſible. But if you will ſay, this *Oppreſſion* needs not be known by *Words* or *Votes*, but *Actions*, *viz.* by the People's actual taking up Arms, this muſt either be by the *whole People* all together at once, or at leaſt, the *major part* of them, or elſe of ſome particular Bodies of Men, much leſs than the whole, or major part: Now the *whole*, or *major part* of a People of a Nation to riſe and *take up Arms* all at *once*, as one Man, is *morally impoſſible*: And if any part leſs than this *whole* or *major part*, (as ſuppoſe a *whole Province* or *City*) every ſuch Party or Body of Men ſo riſing, muſt be guilty of *Rebellion*, and diſturbing the *publick Peace* of the

Common-

Commonwealth, as being but private ſingle Perſons, which you your ſelf granted and condemn'd as unlawful. And therefore I deſire to know, who ſhall judge when this Body or major Part of the People are thus aſſaulted, ſo that they may juſtly defend themſelves? But indeed this Licence of taking up Arms is not only unpracticable, but unreaſonable too; for it ſuppoſes, that after the People have given up all the *Power* they had of *judging* what was bad or good for the Publick, they have this Power ſtill left in them, which would make them at once both *Subjects* and *Sovereigns*, which is a *Contradiction.*

F. Had you been pleaſed but better to have obſerved what I ſaid the laſt time I ſpoke, a great part of this Objection had been ſaved. For I there expreſly aſſerted, that the Security of Men's Lives, Liberties and Eſtates, being the *main Ends* for which Men entred at firſt into *Civil Society*, and likewiſe deſired to continue in it, as being the only means why *Civil Government* is to be preferred before the *State of Nature*, the People neither *did* or *can* give up their *Right of Judging*, when theſe are invaded or taken from them: And therefore you are very much miſtaken, to believe that at the *Inſtitution of Civil Society*, Men muſt have given up their *common Senſes* and *Reaſon* too of *judging* when they are like to be *Murdered*, or made *Slaves* of, or their Fortunes unjuſtly taken from them, by thoſe whom they have *ordained* to be their Governors: And I ſuppoſe you will not ſay, that they thereby acquire a Power of *altering* the *Nature* of things, or of making War, Slavery or Beggary the means of procuring the Welfare and Happineſs of the People, *any more* than they can *enact* that Hunger or Diſeaſes ſhould conduce to the preſervation of any Man's Life: And therefore as the Judgment of theſe things was obvious and natural to every Man's Senſes and Underſtanding in the *State of Nature*, ſo it is as plain, they never intended wholly to give up all their Right of Judging concerning their own Preſervation and Happineſs, and all means neceſſarily tending thereunto, but only in ſuch Caſes, and concerning ſuch Matters as are *beyond* the Power, or *above* the Knowledge of every *ordinary private Subject.* Thus in a Diſeaſe, tho' I give up my ſelf to the Skill and Judgment of a *Phyſician*, yet I do it not ſo *abſolutely*, but that I ſtill reſerve to my ſelf a *Right of judging*, whether he gives me *Poyſon* inſtead of a *Purge.* And if Princes or Supreme Magiſtrates were thus *abſolutely inveſted* with an *Arbitrary Power* of doing whatſoever they pleaſed with the Lives, Liberties and Eſtates of the People, they would then be in a much *worſe* Condition under *Civil Government*, than they were in the *State of Nature*, as I have already proved; and therefore there is no need of any ſuch *general* Meetings or Aſſemblies of *the whole Body*, or *Repreſentatives* of the People, to *judge* when theſe *Fundamental Conditions* of all Government are notoriouſly violated and broken: Since it will be apparent to every Man's Senſe and Reaſon that is thus aſſaulted or injured.

And as for the other part of your *Objection*, how the People can know when the *whole Body* or *major Part* of them is thus aſſaulted or oppreſs'd; and being ſo aſſaulted or oppreſs'd, *what number* are neceſſary to juſtify this *Reſiſtance*? To this important Queſtion I thus anſwer, that if ſuch a War or Aſſault be made upon ſuch a *conſiderable part* of the People, as may *juſtify* this *Reſiſtance* to be *much better* for the good of the Commonwealth, than that *ſo many* People ſhould be deſtroyed; *Reſiſtance* certainly is then lawful: And the reaſon why every particular Perſon, when unjuſtly aſſaulted by his Prince's *Order*, or his *Eſtate* taken away by his *unjuſt Edicts* or *Decrees*, ought not to make any *publick Diſturbance*, only to *ſave* the one, or *recover* the other, I have given you before, *viz.* becauſe the *publick Peace* is to be preferred before that of any *private Perſon*: Yet even then, ſuch a *private Perſon* may very well *defend* himſelf, if *unjuſtly* aſſaulted by *Aſſaſſinates*, whom the Prince, or other Supreme Magiſtrates, ſhall ſend to *take away* his Life without any juſt Cauſe or legal Tryal; tho' I grant he may not ſollicit others to riſe with him, and take his Part, or help him to defend his Life or Eſtate; yet (as a Reverend Dignitary of our Church very well obſerved) *No Man can want Authority to defend his Life againſt him who hath no Authority to take it away.* But much more, when this Aſſault or Oppreſſion is either made upon the whole People in general, or upon ſo conſiderable a Part or Member thereof, as the *Commonwealth* could not well *ſubſiſt* without if it were *deſtroyed*: In all ſuch Caſes, I ſuppoſe the People thus aſſaulted or oppreſs'd, have a *ſufficient Right* to defend their Lives, and *free* themſelves from that Slavery and Oppreſſion they lie under: And thus the People of *Rome* might very well have juſtified their *Reſiſtance* of *Nero*'s Incendiaries, *S. C. R. p.* 59.

when he sent to burn the City, tho' they had been his own Guards. We read likewise in the *Hist. August.* that the Emperor *Caracalla*, the People happening to laugh at him (for his *Folly*) in playing the Gladiator in his *Circus Maximus*, sent his Guards to kill them: So likewise in *Herodian*, that upon another supposed Affront, he sent his *Pretorian Bands* to murder most of the Inhabitants of *Alexandria*, who came out to meet him with a *solemn Procession*. And I suppose no rational Man will deny, but that if the Citizens of *Rome* or *Alexandria* had had Arms in their Hands, they might have *lawfully defended* their Lives against these *Murdering Guards*; for I think it was much better that those should be *destroyed* who were the *Aggressors*, than that so *vast* a Body of *Innocent People* should be made Sacrifices to the unreasonable Passion or Revenge of a *Cruel Tyrant*. So that when the Oppression or Violence to Men's Liberties and Properties is *general* and *notorious*, and affect the *whole Body* of the People; I do then suppose, that any Part of them that are sufficient to *defend* themselves, may do it till they can find *Assistance*, either from the *rest* of the People, or else from some Foreign Prince or State, who will vindicate their Cause and come in to their Assistance. And thus we read the Town of *Brill* in *Zealand*, under the Conduct of the Count of *Mark*, first revolted from the *Tyranny* of the Duke of *Alva*; which Example was afterwards (tho' not immediately) followed by most of the Cities of *Holland* and *Zealand*; and the Courage and Resolution of this Count, as also of the Citizens of this Town, is highly commended by the Historians of that Time, for so nobly *venturing* their Lives and Fortunes to *redeem* their Country from that *Slavery* it then lay under, till at last they were relieved and assisted by Queen *Elizabeth*, to whom the *United Provinces* owe that Freedom they now enjoy.

Vi. Meterani Histor.

M. I shall not now dispute with you, what Right the States of the *United Provinces* might have to *resist* the *Tyranny* of the Duke of *Alva*, then Governor for the King of *Spain*; since *Grotius*, and most Writers which are not of the *Spanish Faction*, suppose that King to have had a *Conditional Right* of governing those *Provinces*, according to their own Laws and Privileges, from the very *first Institution* of the Government; and therefore not being an *absolute Monarch* over them, he might well be *resisted* upon the *Breach* of those *Conditions*. But this is not the Case now in hand, since we are now discoursing of absolute Monarchies or Commonwealths, who being invested with the *Supreme Power* by the *Consent* of the People (as you suppose) and therefore may have by their Consents (whether forced or voluntary, it matters not) according to your own Principles, a supreme unaccountable Power over them: And in the first place, I can shew you how a Man may *make over* all the Power he hath in his own Person *irrevocably* to another; as when a Man sells or grants himself for a *Slave* to another by his *own Consent*; who when he hath once put himself into this Condition, his Master hath an *absolute* Property in his Person, and an *indefeasible* Right for ever to his Service; so that notwithstanding all the cruel, harsh and unreasonable Usage he may meet with from his Master, he can never regain his Freedom without the *Consent* of his Lord: And this I take to be an *uncontested Truth*, agreed on by the *Laws of Nations*, and established by the *Law of God*. Thus St. *Peter* chargeth those who are in this State of Servitude, *to be subject to their Masters with all Fear, not only to the Good and Gentle, but also to the Froward.* So likewise St. *Paul*, in both his Epistles to the *Ephesians* and *Colossians*, *commands Servants to be Obedient to them that are their Masters according to the Flesh*, &c. And that this particularly respects *Slaves*, appears by the 8th Verse of the 6th Chapter of the former of these Epistles.

Pet. Ep. 1. c. 2. v. 18.

Ep. 6. v. 5
Col. 3. 22.

So that if a Man may thus make himself a *Slave* or *perpetual Servant* to another by his *own Consent*, I cannot see any Reason why a *whole Nation* may not do the same, and deliver themselves up to one Man or more, to be governed and treated both for their Lives, Liberties, and Fortunes at his or their Discretion; so that tho' he may perhaps abuse this Power to the *severest Tyranny* or *Oppression*; yet have they *no Right* to shake off this Yoke, or to *resist* him, since their Lives and Fortunes are wholly at his Disposal by their *own Act* and *Consent*. And that *whole Nations* may justly surrender themselves for *Slaves* or *absolute Subjects*, I can give you two Examples approved of by God in the Scriptures: The *first* is that of the *Egyptians*, who, when they had sold all their Goods, and Lands, to *Pharaoh* for Bread to keep themselves alive in the seven Years of Famine we read of in *Genesis*, you'll find they were afterwards such absolute Servants or Slaves to *Pharaoh*,

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That as for the People, he removed them to Cities, from one end of the Borders of Egypt, *even to the other end thereof; only the Land of the Prieſts bought he not,* &c. The other is that of the *Gibeonites*, of whom we read that they accepted of their Lives from *Joſhua* and the *Elders* of *Iſrael*; tho' on the condition of the greateſt Slavery, rather than they would venture to be deſtroyed: So that if *abſolute Monarchy* were *not lawful*, but *contrary* to God's Will and Inſtitution, moſt of the greateſt Kingdoms in the World would be governed *contrary* to the *Laws of God* and *Nature*; and the *Subjects* of all the Kingdoms from *France* to *China* (not reckoning thoſe of *Africa*) might immediately, if they were able, *rebel* againſt their Monarchs, and ſet up what ſort of Government they thought fit, ſince none of the Subjects in thoſe Kingdoms hold their Lives, Liberties or Eſtates by any other Tenure, than the good Will or Pleaſure of the Monarch, who may take away all, or any of them, as often as he pleaſes to do it, and that without *any right* of *Reſiſtance* in all or any of their *Subjects*, let them uſe them never ſo *ſeverely*. Gen. 47. 21, 22.

F. I cannot deny, but what you ſay is ſo far true, that *one* Man, or *many* together, may grant or ſell themſelves for *Slaves* by their *own Conſent*; and that the Perſons who thus make over themſelves, have afterwards no Right or Property in any thing more than a bare *Subſiſtence*; yet that *Servitude* is not by the Law of *Nature*, but only brought in by *Cuſtom*, or the Law of *Nations*, as all Writers agree, and is ſo far lawful, becauſe it tends to the good and preſervation of Mankind, that *Priſoners* taken in *War* ſhould rather be kept as *Slaves* than immediately ſlain, or that Men compell'd by extreme neceſſity ſhould ſell themſelves, or their Children, rather than both ſhould periſh; and therefore it is no wonder that the *Apoſtles*, who were not ſent to alter the State of things in the World, or to entrench upon any Man's *Civil Rights*, ſhould command Servants or Slaves to be ſubject to their Maſters, tho' *Unbelievers*: Yet doth it not therefore follow, that when Men are *forced* to give themſelves thus up to the Power of another, they likewiſe give him an *abſolute Right* over their Lives, ſo as that their Maſters may take them away whenever they pleaſe; for that was more than they ever had over themſelves; nor doth God confer any ſuch Power upon Maſters: And therefore if the Maſter hath no ſuch *abſolute Right* or *Property* in the Perſons of his *Slaves*, as he hath in his Sheep or Cattle; I ſee no reaſon why even *Slaves*, if their Maſters go about to take away their Lives for no other Cauſe but to ſatisfy their own Humour or Paſſion, may not (if they cannot otherwiſe eſcape) *reſiſt* their Maſters, and ſave their Lives if they can: For all Writers agree, that if a Maſter doth ſo ſo *inhumanly* abuſe his *Slave*, that he can no longer endure it without danger of his Life, he may in that Caſe lawfully *run away* and eſcape from him; and why he may not as well *reſiſt* him to ſave his Life, when his Maſter goeth about thus *unjuſtly* and without any cauſe to take it away, I can ſee no reaſon to the contrary; ſince it was only for the *ſaving* his Life, that ſuch a Man could ever be ſuppoſed to yield himſelf a *Slave* to another; and which *Condition* being broken on the *Maſter*'s part, the *Servant* is again in the *State of Nature*, and the *Relation* of *Maſter* and *Servant* ſo far *ceaſes*, or is at leaſt ſuſpended during that Violence.

This being the State of *particular Men*, I cannot think that God hath put *whole Nations* in a *worſe Condition*; nor can I imagine that any *whole Nation*, unleſs urged by ſome *extreme neceſſity*, would ever give up themſelves ſo *abſolutely* for *Slaves*, as not to have any Right to *defend* their own Lives, or a Property in any thing they can enjoy; and if ever they could be ſuppoſed to have done ſo, I think I may boldly affirm, that *ſuch* a Nation are not *Subjects*, but *Slaves*; and the Prince not a *Monarch* or *Civil Governor*, but only a *Lord* of a *great Family*, or *Maſter* of a publick *Work-houſe*.

For I take the *difference* between *Subjects* or *Slaves*, and *Princes* and *Maſters* of Families to conſiſt in this, that the Power of a *Prince* is *chiefly ordained* for the good and preſervation of his *Subjects*, tho' I grant *his own* may likewiſe be included in it as an Encouragement and Reward for his *Labour*; yet not as the principal End of his *Inſtitution*; whereas in a Family of *Slaves*, they are chiefly ordained for his Profit or Benefit that maintains them; but their Happineſs and Preſervation is only accidental, and as it may conduce to that. The *main End* alſo of Civil Government is to inſtitute and maintain a *diſtinct Property* in Men's Eſtates, and which the Prince or Commonwealth can have *no Right* to take away. And therefore tho' I grant that in thoſe *Deſpotick Monarchies* you mention, the Monarchs do

exercise an *absolute Arbitrary Power* over the Lives, Liberties and Estates of their Subjects; yet that this is by *Divine Right* or *Institution* I utterly deny, or that it was always so in all of them from the beginning; for most of those *Empires* you mention can *no otherwise* subsist, than by a constant maintaining vast *Standing Armies* or *Guards* to keep their Subjects in Obedience.

Nor can any Governments be of *Divine Institution*, which are exercised with a *sole Respect* to the personal Power and Grandeur of the Prince, rather than the good and preservation of the People: So that if you will but survey the Accounts that Travellers give us of those *Eastern* parts of the World, you will find that there are no known *settled Laws* or *Properties* in those Countries, except at the *Arbitrary Will* of the Monarch or his Viceroys: And thus all those rich and fruitful Countries of *Egypt* and *Asia*, which formerly flourished in all Arts, Knowledge and Civility, and abounded in Multitudes of People, are now, in most places, reduced to meer *Desarts*, and do not breed a *tenth part* of that Number of People as they did in former Ages; which proceeds from no other Cause but the *Cruelty* and *Injustice* of the Government, quite different from what it was in the time of the *Roman* Emperors, who, tho' I confess they were in some sense *absolute* too, yet governed by, and were obliged to observe *known Laws*; and the People had a *settled Property* in their Estates, which the Prince had no *Right* to take away: I shall not enquire how all these *Monarchs* came to be so *Arbitrary* at first, and thus to *abuse* their *Power*; but the Generality or Antiquity of this *Abuse* can be no more a *Plea* for its *Right*, than that because *Idolatry* was generally practised throughout the World within three or four hundred Years after the *Flood*, till three or above four hundred Years after *Christ*; therefore *Idolatry* was the *true* and *ancient Religion* of the World.

Now, tho' I will not condemn this sort of *Government*, where the Subjects enjoy no *settled Property* in Lands or Goods as *absolutely unlawful*, and directly *contrary* to the *Laws* of *God* or *Nature*: Yet in those Kingdoms and Commonwealths, where *Civil* or *Hereditary Property* is once introduced, I think it is not lawful, nor indeed in the *power* of the Prince or Commonwealth to *destroy* or *take it away*: And therefore if the *Roman* Emperors should have endeavoured, by any Laws or Edicts of their own making, to have *destroyed* all *Civil* or *Hereditary Property* in Lands and Goods, and to have *reduced* all the Estates of their Subjects into their *own Possession*; I think they might have been *lawfully* disobeyed and resisted by the People, since they went about to destroy *one great End* of Civil Government, *viz.* the instituting and maintaining of *Civil Property*.

To conclude, I freely grant that in *all Countries* which are governed either by *absolute Monarchies* or *Commonwealths*, the *Soveraignty* is so fully in one Person or Body of Men, that it hath *no other Bounds or Limits* under God but its *own Will* or *Commands*, provided they do not apparently tend to the *absolute Ruin* and *Destruction* of the People; for that being *inconsistent* with the *Notion* or *End* of governing them, they are, and ever will be *Judges* of it: And therefore even amongst the *Turks* and *Tartars* themselves, if they should once find their Prince go about *wilfully* to destroy them, or sell them for *Slaves*; you would soon find (notwithstanding this *servile Subjection*) that they would quickly be rid of them, as the *Janizaries* have served their Emperors of late Years for far less Faults.

M. I cannot deny but you have spoken reasonably enough on this Subject; and perhaps if you had *restrained* this *Power* of *Resistance* only to such Cases where the Prince or Monarch makes *open War* upon his People, or doth otherwise *actually* go about to *destroy* them, it might have been a tolerable Doctrine that they may *lawfully resist* the *Forces* he shall send against them; but this is a Case that so seldom happens (if ever at all) that it can never be supposed, and *no Prince, unless he were Mad*, can be guilty of it; and therefore whenever he acts thus, I think he may *not only be lawfully resisted*, but *tied up for a Madman*: But this is seldom or never the Case between *Monarchs* and their *People*, for most of the *Rebellions* and *Insurrections* that I have ever read of, or observed in the World, have not proceeded from any *necessity* that the People had *to rise up in Arms* and *rebel* against their *Supreme Magistrates*, because their Lives or Estates were assaulted, or in danger to be taken away; but for the most part they arose either from the *too great Cruelty* or *Severity* of the *Supreme Power* towards some particular *private Men*, who by themselves, and their Friends and Relations, have gone about to revenge those Injuries that they supposed had been done them: And of this all Histories are so full, that

I need

I need give no particular Inſtances of them; all which *Abuſes* may be reduced to theſe Heads; *Firſt*, When a Prince doth commonly himſelf violate the *Chaſtities* of the Wives or Daughters of the Subjects, which tho' it hath been the *Ruin* of *diverſe Princes*, yet is he able to do this only to ſome *few particular* Perſons: And tho' if he ſhould permit his *Soldiers* or *Officers* generally to do this without *any Puniſhment*; yet even this can hardly, if ever, extend to all the Wives, Daughters or Women in a whole Country: And therefore both theſe Caſes are to be born withal, according to your own Principles, ſince it doth not tend to the *Slavery* or *Deſtruction* of the People, I mean, as to their *whole complexed Body*. A *Second* is, when an *abſolute* Prince or Monarch goeth about to *alter* the *eſtabliſhed Religion* of his Country, and to introduce a *different one* by his own *ſole Authority*, whilſt the *major* part of the People continue of another *Opinion*. In this Caſe I ſuppoſe you will not affirm that the *Subjects* have a *Right* to *reſiſt* their Prince for ſo doing: For then the *Romans* might juſtly have *rebelled* againſt *Conſtantine*, when he ſhut up the *Heathen Temples*, and forbad all *publick Sacrifices* to their Gods, and thereby made the *Chriſtian* Religion the *eſtabliſhed Profeſſion* of the *Empire*.

F. But pray Sir give me leave to interrupt you a little; might not *Conſtantine* have a *Right* to do this, becauſe the *Chriſtian Religion* is the only true one; and that the *Idolatry* the *Romans* then practiſed, was againſt the *Law* of *Nature*?

M. Whatever weight there may be in this Anſwer, yet you have no reaſon to put this Queſtion now, ſince you have already, *viz.* at our firſt Conference, aſſerted that an *Erroneous Conſcience* puts Men under an Obligation to follow it, during the time they are under this *ignorance* of the *Truth*: And therefore if the *Roman* Emperors had *not a Right* to do this by their *own Authority*, without any *Reſiſtance*; the *Subjects*, whilſt they believed the Worſhip of their God to be thereby deſtroyed, *might*, nay ought to have reſiſted the *Emperor*, rather than to have ſuffered him to have *altered* the *ancient Religion* of the Empire, and to have brought in another, which they look'd upon as an *upſtart*; and it is very natural for Men to do ſo, ſince nothing ought to be more dear to them than the *Worſhip* and *Honour* of *God*.

F. I do not deſire at preſent to embark my ſelf in this tedious and troubleſome Diſpute about the *Authority* of the *Supreme Powers* in Matters of *Religion*; and therefore I ſhall ſay no more to it at preſent. But if your Aſſertion be true, that an *abſolute Monarch* may ſet up *what Religion* he pleaſes, without being *reſiſted* by the *Subjects*, whom I ſuppoſe to be of another *Perſuaſion*, it will then follow, that if the *French* King or Emperor of *Muſcovy* ſhould turn *Mahometan*, and ſhould ſet up that Superſtition by *Force*, for the Publick and National Religion of the Country, tho' with the *Deſtruction* of all that ſhould *oppoſe* it, none of their Subjects might *reſiſt* them in ſo doing; and if ſo, I deſire you to conſider what you have gained to Religion, by thus aſſerting ſuch an *unlimited Prerogative* to all Monarchs. But laying aſide this Diſpute till another time, I pray go on to the reſt of thoſe Caſes in which the People do take upon them to *reſiſt* the *Supreme Powers*.

M. I ſhall comply with your deſires; and therefore a *third* Pretence of Subjects to *rebel*, is when the *Supreme* Powers ſhall think it neceſſary to *levy* upon their People more heavy and grevious *Taxes* and *Impoſitions* than the People are willing, or it may be, able to pay. Now if your Principle be true, that they may *riſe in Arms* and *reſiſt* the Supreme Powers, whenever they think themſelves thus *intolerably oppreſſed*; and if they ſhall be *ſole Judges* of this Oppreſſion, then all the *Rebellions* that ever were made in *England* or elſewhere, by reaſon of ſuch exceſſive Tributes or Taxes, would be *lawful*; which would be a perpetual ground of *Anarchy* and *Confuſion*; for *private Subjects* not being admitted into the Privy Councils of Princes or States, can never be ſuppoſed to underſtand whether the neceſſities of the *Commonwealth* may require them or not: And indeed the People do ſo often *repine* and *murmur* at the Government, when the *publick Neceſſities* require to impoſe greater *Taxes* or *Gabels* than they think they can well bear; that the *Mobile* of any *great City* or *Province*, for Example, who think themſelves thus oppreſſed beyond what they are able, or perhaps willing to bear, may riſe in *Rebellion*, and throw off all *Obedience* to *Civil Authority*; and they may have a very good Pretence for it, according to your Principle, becauſe they may look upon themſelves as a *very conſiderable*, nay *neceſſary* part of the *Commonwealth*. And thus the common People of *Kent* might have juſtified their *Rebellion* in *Richard* II's Time under *Wat Tyler* and *Jack Straw*; and the People of *Devonſhire* and *Somerſetſhire* might likewiſe

wiſe have juſtified their *Inſurrection* in *Henry* VII's Reign under *Flammock* the *Blackſmith*: And I could mention others of the like nature; but I forbear, becauſe you may ſay they were upon account of *Religion*. And *Laſtly*, This Principle might very well juſtifie the Inſurrection of the common People of *Naples*, under *Maſſanello*, which, beſides the vaſt ſpoil it made upon the Goods and Palaces of the Nobility, ended at laſt (whatſoever they pretended at firſt to the contrary) in delivering up themſelves to the King of *France*, who refuſing to protect them, they were ſoon reduced to their former Obedience to the King of *Spain*.

In ſhort, if the People ſhould take upon them to *Reſiſt* or *Rebel* whenever they thought themſelves intolerably injured and oppreſſed in their Eſtates by immoderate *Taxes*, there would be no end of ſuch *Rebellions*, eſpecially conſidering the advantage which Wicked, Crafty and Ambitious Men would thereby take to excite the People to *riſe* and *depoſe* their lawful Governors, and ſet up themſelves in their room, upon pretence of better Government and greater Liberty; and how prone the *common People* have been to receive ſuch *Impreſſions*, he is but meanly skill'd in antient and modern Hiſtory, who is not convinced of it.

F. To anſwer this Objection before you proceed farther, my Opinion in ſhort is, that tho' Taxes may often prove an Univerſal Damage, and a great Impoveriſhment to the Subjects; yet if they are ſuch as may be born with leſs trouble than can follow from a *Civil War*, or the *Change* of the *Government*, there is no juſt or ſufficient cauſe of *Reſiſtance* of the Soveraign Magiſtrates Commands or Edicts concerning them. As for Example, ſuch great Taxes as the Subjects pay, and perhaps may bear it well enough in *Holland* and other Countries, ſince there may be a neceſſity for ſuch Taxes; and of this I grant the *Supreme Authority* of the Nation can be the only Judges; and how far this may extend I cannot poſitively determine; for ſuppoſe you ſhould ask me, if the *Supreme Powers* ſhould borrow all the ready Money the Subjects had, for the neceſſary uſes of the State, ſo that they would give them Leather or Braſs Money inſtead of it, to go at the ſame Value, for the neceſſary uſes of *Commerce*; yet if they did not take away their Property in their Lands, Corn, or Living Stock, which are the neceſſary means of their Subſiſtance; I do not think it were a ſufficient Cauſe to take up Arms againſt their Governors for ſo doing; becauſe the Subjects cannot tell but that the neceſſities of the State (for their neceſſary defence againſt a Potent *Foreign Enemy*) may require it. And ſure it is a much greater Evil to fall into a *Civil War*, or to be ſubdued by *Strangers*, than to part with their Money; ſince by ſuch a War or Conqueſt, they might not only loſe that Money, but alſo their Liberties and Eſtates.

Yet on the other ſide, I would not be underſtood to give the *Supreme Magiſtrates* a Power to invade the Properties and Eſtates of their Subjects to what degree they thought fit; for then they might tax them to that extremity as might force them to ſell themſelves and their Wives and Children for Slaves, or elſe being unable to pay, muſt be forced to run away and leave their Habitations (as the *Peaſants* often do in *France*) whereby whole Villages, nay Towns, may become depopulated, as they are in divers parts of *Italy* and *Turkey*, by ſuch extraordinary Severities; and therefore in *abſolute Monarchies*, where there is no Nobility, Gentry nor Yeomen, who can claim any Property in their Eſtates, which with us make up the beſt and moſt conſiderable part of the People; and where the Government being wholly *Military*, is exerciſed over the People only by *force of Arms*; I doubt not but ſuch a People, reduced to this Extremity, may not only quit the Country where they are thus intolerably oppreſs'd, but that if they are not of themſelves ſtrong enough to make *Reſiſtance* and caſt off this intolerable *Yoke* by Force, they may (if an occaſion be offered) join with any Neighbouring Prince or State that will undertake their Quarrel; and upon this Account, I think we may very well juſtify the *Revolt* of the *Greek* Chriſtians from the *Ottoman Yoke*, and putting themſelves under the Protection of the *Venetians*, both in the *Morea* and other Places; and alſo upon the ſame Principles, I conceive the common People of *France*, who are reduced to the like Extremities, might alſo with a ſafe Conſcience revolt from the preſent King, and put themſelves under the Protection of the Prince of *Orange*, our now preſent Soveraign, or the States of *Holland*, if ever they ſhould be ſucceſsful enough to make any conſiderable *Invaſion* upon that Kingdom.

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And therefore I must confess, that there can be no certain and stated Rule set down, to what Proportion absolute Princes or Commonwealths may tax their Subjects; since in some Countries the People can better part with a Shilling than in others they can pay a Penny. And as I grant it must be left to the Mercy and Discretion of the Governors what Taxes to impose without thus ruining and destroying their People, as it is left to the Judgment of the Owner of the Beast, how much Burden it is able to bear: So if he, by laying too great a Weight, breaks the Back of his Horse or Beast, he not only hath the Loss, but makes himself the Laughing-stock of all his Neighbours. So that tho' I confess the People ought to have patience, and rather to suffer many Oppressions and Hardships, than to put themselves in this miserable *State of War*; yet there is a *Midst* in all things, and the People may be so cruelly *oppressed* by *Taxes*, and other Impositions, as it is impossible for them longer to subsist, or provide Necessaries for themselves and their Families: And since you have already granted, that the People may judge when their Prince makes War upon them, and goeth actually about to destroy them by the Sword, I cannot see why they may not have the same Right of judging when they are like to be destroyed by Famine too. And who can be judge of this, but those who feel it?

But indeed it is morally impossible for the People to be mistaken in so plain a Case: For tho' this many-headed Beast (as you commonly call them) the People, cannot argue very subtilly of the future Consequences of things, yet they have a very nice and tender Sense of Feeling, and can very well tell, when they are so injured and oppressed, that they can bear it no longer: For then sure they may be allowed to have as much Care and Sense of their own Preservation, as *Camels* and *Dromedaries*, which (as Travellers relate) tho' they are taught by their Masters to kneel down, and to receive their Loads, which they will patiently endure as long as they are able to bear them; yet when once their Masters do over exceed that Weight, neither fair means nor foul can prevail upon them to rise, or they will throw off those Loads, if risen, that they feel will otherwise break their Backs. But I have discoursed long enough on this Head, and therefore if you have nothing more material to except against it, I pray proceed to the rest of the Causes that Subjects may, as you think, pretend to have to take up Arms against the Supreme Powers.

M. I have somewhat more to urge towards proving that this Liberty, which you allow the Subjects, wholly tends to *Anarchy* and *Confusion*; but I shall reserve it to the last, when I shall sum up all that I have farther to urge upon this Subject; and therefore I shall proceed to the other Pretences that Subjects in *absolute Monarchies* may make to *rebel*; and the next may be, that the *Monarch* looking upon his *Subjects* as his *Slaves*, may either use them so himself, or sell them to other Nations for that purpose, as *Monsieur Chardin* tells us, the King of *Mingrelia* often doth diverse of his People to raise Money. And tho' I will not be so ridiculous as to suppose that such a Monarch can sell away all his People at once, for then he should be left alone without any Subjects, and consequently become no King; yet in such Monarchies as diverse of the *Eastern* and *African* are at this Day, where (as you your self own) the People have no Settled or Hereditary Property in their Estates, the Monarch may dispose of their particular Persons as he thinks fit; I cannot see any reason why the Monarch may not in those Countries, without any blame, exert his Prerogative if he pleases, and take as many of his Subjects or their Children to serve him as Slaves, as he thinks necessary for his Service.

Vi. Sir Jo. Chardin's *Travels l.* 1.

And therefore whatsoever People or Nation have thus subjected themselves to the absolute Power or Dominion of one Man, they have no more right to regain their Natural Liberty, than I should have of taking away any thing by Force which I had before given or granted to another; for this sort of *Civil Servitude* is not so repugnant to Nature as some imagine; or that because Subjects were forced to consent to it for the avoiding of some greater Evil, they can afterwards have any right to shake it off again whenever they will: For tho' I grant that God hath not instituted any such Servitude; yet when once it is introduced in any Country, Men are not at Liberty to cast off the Yoke whenever they please, but to observe St. *Paul's* Rule, *If thou art a Servant, care not for it; but if thou art Free, chuse it rather*; that is, *Freedom* is to be preferred before *Servitude* or *Subjection*. But where Providence hath made Men absolute Servants or Subjects, they are bound

bound to continue in that State, unleſs the *Supreme Powers* they are under think fit to releaſe them from it; and therefore this can be no good Pretence under *abſolute Monarchies* for Subjects to take up Arms againſt their Prince, for ſuch a State of Liberty which they never enjoyed.

F. I ſhall not trouble my ſelf to diſpute what Right an *abſolute Monarch* may have over the Perſons of his People, in a Country where they have no Property nor written Laws, and where they look upon themſelves as no better than Slaves to their Prince, and perhaps may take a Pride in it (as I have read the *Ruſſians* do.) And therefore if they have ſo wholly ſubmitted themſelves, I grant what you aſſert is true, and that they have no Right to *Reſiſt*, according to the old Saying, *Volenti non fit Injuria.* And yet even in theſe *Deſpotick Monarchies*, tho' the Prince may pick out here and there ſome of his Subjects to ſell for Slaves, or elſe to uſe them as ſuch himſelf; yet I do much queſtion, if he ſhould go about to make any conſiderable Number (as ſuppoſe to take 20 or 30000 all at once for Slaves) I ſay, I do much queſtion whether theſe People would be ſo convinced of your Principles of *Paſſive Obedience* and *Non-reſiſtance*, as to let their *Monarchs Guards* drive them into *Slavery*, like Sheep to the Market, but would, if they were able, make a *vigorous Reſiſtance*, and knock their Drivers on the Head. Whether *Jure, vel Injuria*, I ſhall not diſpute.

But for all this, even in *abſolute Monarchies*, where the People have a ſettled legal Property in their Lands and Eſtates; and conſequently where their Perſons are Free, I doubt not, if their Princes ſhould go about to make all his Subjects Slaves, but that they might lawfully *reſiſt* him, or thoſe he employs in ſo doing. And tho' it be true he could not make all his People Slaves at once; yet if he aſſerted it as a part of his *Royal Prerogative*, and alſo exerciſed it on particular Perſons as often as he thought fit, or could, I doubt not but the People might make it a common Cauſe; ſince none can know whoſe Turn it may be next; for ſure *Liberty from Servitude is as neceſſary to Man's Happineſs and Well-being, as Life is to his Exiſtence*; which would ſeem no great Benefit to thoſe, who being *Born Free*, were reduced to *Slavery*; it being well ſaid by the Poet, *Non eſt vivere, Sed valere vita.*

Martial.

And tho' the *Roman* Emperors did exerciſe an *abſolute Power* over their Subjects, yet I never read that they durſt preſume to make *Slaves* of *Free-born Romans*; nor indeed of any of thoſe Nations they ſubdued; for they had too great a ſenſe and love of *Liberty* themſelves, ever to impoſe ſuch a Yoke upon the People they *Conquered*, which was ſo deſtructive to the common Happineſs and Preſervation of Mankind. And I ſuppoſe if the *French Grand Seignieur*, as Abſolute as he is, or pretends to be, ſhould go about to ſell his Subjects (eſpecially the Nobility) for Slaves, all that the *Jeſuits* (thoſe Inſtruments of Slavery) could do, would not, I believe, be able to keep that People from riſing againſt him. But if you have nothing farther to object againſt what I have now ſaid, I pray proceed to the next Head, if you have any more Inſtances to make.

M. I am now come to the laſt Pretence that Subjects may make to Rebel, and that is, ſuppoſing the *Monarch* ſhould at once, or by degrees, turn the Subjects out of their legal *Hereditary Properties* in their Eſtates; and of this you your ſelf grant there can be no Diſpute in thoſe *Deſpotick Monarchies*, where there is no *Hereditary Property* allowed: And as for all other Governments, ſince you do own that all legal and civil Property in Lands did chiefly proceed, or at leaſt is eſtabliſhed by the civil Power, I cannot ſee why thoſe Powers in any Kingdom (if they think it would conduce to the good of the *Commonwealth*) may not deſtroy this civil Property, and either make all Eſtates equal, or elſe ordain that they ſhall be enjoyed (as in all *abſolute Monarchies*) at the Will of the Prince; ſince if the *Supreme Powers* are the Author of this Property, ſure they may alter and abrogate it again as often as they think fit.

F. I ſhall not diſpute with you concerning ſuch Kingdoms where there is no civil Property yet inſtituted, or where the People do own themſelves Slaves to the Prince; but if ſuch a *Monarch* hath remitted any thing of this *Right*, and hath inſtituted a legal *Hereditary Property* in Eſtates; ſuch a Law being once made, *I do not think it is in the Prince's Power to revoke it*, any more than it is for a Maſter to reduce his Slaves again to Servitude after he hath once ſet them free; ſince both Men's Liberties, or a ſettled or Hereditary Property in Eſtates, do equally conduce to the Happineſs and Propagation of Mankind, and the Good of that

People

People or Nation wherein it is introduced: And I doubt not but *Pharaoh*, tho' he was Lord of all the Lands of *Egypt*, by the Grant of the *Egyptians*, yet might law fully have been *resisted* by them, if he had gone to take away those *four fifth Parts* of the Profit of the Lands which he had left them *Free* by his own Concession.

So that even in such *absolute Empires*, the Monarchs have Power to dispose of the Estates of the People only as far as the Compact or Concession at first made by them or their Predecessors do allow. And it is also not much otherwise, where the Subjects do not acknowledge their Estates as the Gift or Benefit of the *Supreme Powers*: And that may happen chiefly too ways, either *First*, When any *Free People*, under the Conduct of a Captain or Leader, created by themselves, have Conquered any new Territory and Habitation; or else, *Secondly*, When divers Fathers or Masters of a Family, who had Estates of their own before, have agreed for their mutual Security, and the quiet enjoyment of what they were already possess'd of, to joyn together into one *Commonwealth*, under the Command of one or more Men; or else of others that will bring their Estates, and joyn themselves to such a Government already Constituted, and will subject themselves to this *Supreme Power*, according to the Conditions already agreed on amongst them. A *Third* Case may be, When an *Hereditary Property* in Land was establish'd before the *Monarchy* began, as in the *Roman Commonwealth*, this Property was establish'd before the Government was changed from a *Republick* to a *Monarchy*; so that the People did not owe their Property to the Emperors Grant or Donation.

In the former Case, if such a *Free People* conquer a Country under the Conduct of a Captain or Leader; tho' I grant such a Country may be assigned by him to all the People by Lot, or in proportion to the greater Merit or Service of his *Fellow Adventurers* or *Soldiers* (tho' it may seem that the Property of particular Men may have proceeded not from their own Right or Possession, but from the Assignment of their chief Captain or Leader) yet are not the Estates which such particular Men enjoy, to be look'd upon only as the meer Grace or Favour of such a Prince; since most of those who followed him in this *Conquest* or *Expedition*, did it not as *Subjects*, but as *Volunteers*, and without whose assistance he could never have *Conquered* at all; so that they thereby acquir'd to themselves a certain *Portion* or *Share* in the Land so conquered; tho' for avoiding Dissentions and Quarrels amongst them, it was left to the disposal of this new Prince, as a publick *Trustee*, to distribute to each Person what Share he should have. But in the other Case, when Fathers or Masters of Families, before *Free* and possest of *Hereditary Estates*, do submit themselves to the Command of one Man Voluntarily or by Election, those Estates do much less depend upon the Will or Favour of that Prince. And therefore, if such a Prince should, without their Consents, go about to take away their Property in their Estates, he might very justly be resisted by them, since a quiet enjoyment of these in Peace and Safety, was one of the chief reasons that made them chuse him for their Prince, and was certainly one of the Original Compacts of the Government.

And that in *absolute Monarchies*, where the Subjects were not Slaves, they look'd upon themselves to have such a settled Property in their Persons and Estates by Compact, that *Seneca* boldly pronounced, *Errat, siquis existimat tutum esse ibi Regem, ubi nihil a Rege tutum est; Securitas Securitate mutua paciscenda est.* And Mr. *Hobbs* himself, as much a Friend as he was to the *Arbitrary Power* of *Monarchs*, and an Enemy to the *Natural Rights* of *Subjects*, yet is forced in his *Leviathan* to confess, *that the Riches, Power and Honour of a Monarch, arise only from the Riches, Strength and Reputation of his Subjects; for no King can be Rich, nor Glorious, nor Secure, whose Subjects are either poor or contemptible.* Tho' how this Riches and Strength of Subjects can consist with that *absolute Power* which he gives his Sovereign over the Persons and Estates of his Subjects, I cannot understand; since he will not allow of any Compacts or Conditions between him and them. But that their *Propriety* may very well consist with the *Power* of the Prince, *Seneca* shews us; *Jure Civili* (says he) *omnia Regis sunt, & tamen illa quorum ad Regem pertinet universa possessio in singulos Dominos descripta sunt, & unaquæque res habet possessorem suum. Itaque dare Regi, & donum, & mancipium & pecuniam possumus, nec donare illi de suo dicimur. Ad Reges enim Potestas omnium pertinet, ad singulos Proprietas.* And the Earl of *Clarendon*, in his Survey of the *Leviathan*, makes this excellent Remark upon this Passage of Pag. 96.

Cap. 24. *Seneca: And that Prince who thinks his Power ſo great, that his Subjects have nothing to give him, will be very unhappy, if he hath ever need of their Hands or their Hearts.* So that notwithſtanding this univerſal Power, or ſupereminent Dominion of the Emperor over all things, which *Seneca* there ſuppoſes; yet if he ſhould have gone about to have invaded all Mens Properties, and reduced all Mens Eſtates into the publick Treaſury, I doubt not but he would ſoon have had not only his own Legions, but the whole Empire about his Ears. And tho' I have heard that the *French* King doth by his exorbitant Taxes and Gabels raiſe more Money out of the Kingdom of *France*, and the Territories annexed to it, than the *Ottoman* Emperor doth out of that vaſt Empire (of which he hath the ſole Propriety of the Lands in himſelf) yet if the *French* King ſhould endeavour, by the Power of his Standing Army, to take away all Mens Hereditary Properties in their Eſtates, and make them all to be holden at Will, I doubt not but he would not only be oppoſed by his Subjects, and perhaps ruined in the Attempt; but alſo, if he ſhould ſucceed in it, would be ſo far from being the richer, or more powerful, that he would become the poorer and weaker, when he had done: Since no Man would take the pains to build, till, or improve their Eſtates, any more than they do in *Turkey*, when they were not ſure how ſoon they might be turned out of them, or at leaſt could hold them no longer than for their Lives, or a few Years. So prevalent a thing is this empty Shadow and bare Name of Property that is now left in *France* (being often charged with Taxes to above half the Value of the Eſtates) to encourage the People to beautify, cultivate, and improve a Country abounding with all thoſe Riches that Nature or Art can produce.

And to let you ſee I am not at all partial, I think I may ſafely affirm the ſame of the *Legiſlative Power* in this Kingdom; ſo that, if it ſhould happen (which tho' highly improbable, yet it is not impoſſible) that the Lords and Commons aſſembled in Parliament ſhould ſo far abuſe the Truſt repoſed in them, as to give up all their Civil Properties in their Eſtates into the King's hands, to be diſpoſed of as he ſhould think fit, and that the King ſhould thereupon go about to turn all the People out of their Eſtates, I doubt not but they might in that caſe *reſiſt* the King, if he went to do it by force, notwithſtanding this Act of Parliament: And my Reaſon is, that a *ſettled Hereditary Property* in Eſtates being as antient, if not more, than Parliaments themſelves in this Nation, muſt conſequently be a fundamental Law of the Government, and ſo cannot be altered by its Repreſentatives. For tho' it be true, the People have given them a Power to diſpoſe of what Part of their Eſtates they ſhould think fit, yet did they not make it abſolute, to extend either to their Liberties (I mean in reſpect of Slavery) or their whole Properties in their Eſtates. And if the King may be *reſiſted*, if he invade them by his own ſole Authority, the Reaſon would be the ſame why he might be alſo *reſiſted*, tho' back'd by an Act of Parliament; ſince the taking away of Civil Property would prove as deſtructive to the People's Liberties and Happineſs in the one caſe, as in the other, and as great an Abuſe of the Truſt repoſed in them that were deſigned to protect it.

M. I cannot except againſt your Diſtinction between thoſe Governments, where a Property in Eſtates did precede the Inſtitution of the Government it ſelf; for there, I grant, that ſuch a Property may be a fundamental Law of the Government; but in thoſe Monarchies that have begun by *Conqueſt*, under the Command of a King or abſolute Prince over an Army of his own Subjects, in that caſe, upon the Conqueſt of a Kingdom or foreign Nation, not only the Prey or Goods of the Vanquiſhed, but alſo their Eſtates, were forfeited to the Conqueror, who had a Right either to retain them for himſelf, or elſe to diſtribute them as Rewards amongſt his Officers and Soldiers. And that this is the Right of all Conquerors, whether Commonwealths or Monarchs, by the *Law of Nations*, and was exerciſed amongſt the antient *Greeks* and *Romans*, as well as other Nations, I refer you to your own Authors, *Grotius* and *Puffendorf*. And therefore, ſince it appears from Hiſtory, that moſt of the Kingdoms now in *Europe*, and particularly this of *England*, began from *Conqueſt*, under the Conduct of their firſt *Saxon* Kings; if then whatſoever was ſo conquered was acquired for them, and they alone had a Property in it, it will neceſſarily follow, that all Eſtates which the Subjects of all ſorts now enjoy, muſt have proceeded from their Grants or Conceſſions: And hence it is, that not only in *England*, but alſo in *Scotland* and *France*, they are all held either *mediately* or *immediately* of the King, as being at firſt all derived from him. And

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we read in the antient Laws of *Scotland*, that the King had the whole Property of the Country till the Reign of *Malcolm Canmor*, who, as we read in the antient Hiſtories of that Country, granted all the Lands in *Scotland* to his Nobility and Gentry, according to that old Maxim in their Law, *Rex diſtribuit totam terram Scotiæ hominibus ſuis.* And therefore if *Hereditary Property* in Eſtates were only from the Gift and Bounty of our Kings, without any fundamental Contract between them and their Subjects, as you ſuppoſe; cannot ſee any reaſon (granting the worſt that can happen, which is highly improbable) if the Kings of this, or of our neighbouring Nations, ſhould go about by force to deſtroy and take away this *Hereditary Property* they now enjoy, that the People ſhould have any Right to reſiſt them; but that it would be not only *Ingratitude*, but *Rebellion* ſo to do. For tho' I own that Kings were guilty of Perjury in the ſight of God, if they did it; yet that being an Offence only againſt God, the Subjects could have no more Right to reſiſt, than Sons in the State of Nature had to reſiſt their Father, if he ſhould go about to take away thoſe Eſtates, which he had before beſtowed upon them.

And as for what you ſay concerning the *Roman* Commonwealth, I grant indeed, that the Government of the *People* did there precede that of the *Emperor*; yet if you pleaſe to remember, *Monarchy* was the firſt and moſt antient Government of that People: And I doubt not but all the Property the *Romans* had in their Eſtates, tho' they proceeded from Conqueſt of their Arms, yet it was wholly owing to the Grace and Bounty of their firſt Kings; and when, upon the Expulſion of *Tarquin*, the Supreme Power became divided between the Senate and People, the Property of all the Lands that were conquered, devolved upon them, who often divided them to particular private Men, as they thought fit; tho', I confeſs, the not dividing of theſe Lands amongſt the Common People, was afterwards the Cauſe of great Tumults and Commotions among them: Yet notwithſtanding the Senate and Nobility ſtill maintained their Power, and to the laſt refuſed to make a Diviſion of thoſe Lands they had formerly conquered. So that the *Roman* Emperors ſucceeding in the Power of the Senate and People, they were likewiſe reſtored, as it were *ex poſtliminio*, to the Prerogatives of the firſt Kings, and conſequently, as *Seneca* himſelf confeſſes in the place you have quoted, tho' the *particular Propriety* of Eſtates was in private Men, yet you ſee he grants, the *univerſal Poſſeſſion* or *Dominion* of them was in the King or Emperor, from whom they were originally derived.

I would not be thought to ſpeak thus, as if I were an Enemy to Mens Liberties and Properties, or that I either fear or deſire any Change in them, from what we now enjoy; but ſince I think it a thing morally impoſſible to alter them, and that therefore no King will be ſo ill adviſed, as to go about to ſeize them into his own hands; but only by way of diſcourſe, ſuppoſing the worſt that can happen, I think we are not only obliged in Conſcience, but alſo that it were much better for the common Peace, that the King ſhould take all we have, than that we ſhould involve the Nation in Civil War and Confuſion, and our Conſciences under the Guilt of a mortal Sin, by ſuch Reſiſtance and Rebellion.

F. I am very ſorry to ſee, that by your Principles all the free Nations of *Europe* lie at the Mercy of any Prince, to be made as errant Slaves as any are in *Turkey*, whenever their Monarch pleaſes, or that they think that they can make more of their People by taking away their Eſtates and Liberties, than by letting them enjoy them, which would render *Civil Property* in all Kingdoms like private Eſtates, which every Man may let to his Tenants at Will, upon a Rack Rent, or for Years or Lives, as they ſhall think fit. But I think I may very well differ from you in both your Propoſitions: For, omitting any farther Diſcourſe of thoſe *Eaſtern Monarchies*, where I grant the People are little better than Slaves; yet I think I can eaſily prove, out of the antient Hiſtories of thoſe Kingdoms that are now in *Europe*, that tho' moſt of them began by *Conqueſt*, yet was it not under the Conduct of *abſolute Monarchs*, but under ſuch Princes or Leaders, whoſe Followers (as I ſaid before at our laſt Meeting) were not properly *Subjects* nor *Mercenaries*, but *Volunteers*, under thoſe that commanded them; and therefore would never have gone out of their own Countries, but to advantage themſelves, and to enjoy thoſe Privileges, which their Countrymen had at home; of which Liberty in their Perſons, and Property in their Eſtates, were the chief: And this is apparent in the *French* Nation, who, whatever their Condition may be now, yet antiently called themſelves *Franci*, in oppoſition to that Servitude, which they ſuppoſed their neigh-

neighbouring Nations amongſt the *Germans* were in to the *Romans* at that time. And tho' I grant, that theſe Nations of the *Goths*, *Vandals*, *Francs* and *Saxons*, from whom moſt of the Kingdoms in *Europe* are now derived, might veſt or intruſt the Lands of the Countries they had conquered in them whom they had made their Kings, yet ſtill it was with this Truſt, that retaining a ſufficient Part to ſuſtain the Royal Dignity, they ſhould diſtribute the reſt to all their Officers and Soldiers, according to each Man's Valour or Merit: And if they had refuſed to have done this, can any Man believe, that ſo free a People, as the antient Hiſtories relate them to have been, would ever have ſuffered it, *without pulling down thoſe Kings they had ſet up*, which was then very common among them for much ſlighter Occaſions? And to go no higher than *William*, (whom you call the *Conqueror*) can any Man believe, that if he had retained all the Lands of *England* to himſelf, not only his own *Norman* Lords and Soldiers, but thoſe of other foreign Nations, who aſſiſted him in this Expedition, would ever have ſuffered him to have reigned in quiet over them, if inſtead of a *limited King* he had ſet himſelf up for an *abſolute Monarch*, and have granted them no Eſtates but at his Will and Pleaſure; which would have reduced the Conqueror and the Conquered to the ſame Condition?

But as for your Example of *Malcolm Cannor*, I cannot believe that the Kings of *Scotland* were ever poſſeſſed of the whole *Hereditary Property* of all the Lands in that Kingdom, ſo as that no Man had any ſettled Intereſt in them before that time; and therefore I muſt beg your pardon, if I think this Paſſage in their Hiſtorians to be very ſuſpicious, if not falſe. But I ſpeak this only by the by, and I reſerve what I have more to ſay on this Head for another time, wherein I doubt not but to be able to ſhew you, as evidently as can be done after ſo many Ages, that all the Kingdoms in *Europe*, which are deſcended from the *Gothick* or *German* Nations, commenced at firſt from Compact with their firſt Kings, and have thereby an unalterable Right in their Lives, Liberties and Eſtates; and if ſo, have likewiſe Right to defend them, if generally and univerſally invaded by their Princes.

But granting, for the preſent, what you have aſſerted to be true, that all this Property, which is now in *Europe*, proceeded wholly from the Grants and Conceſſions of Princes; yet will it not follow, that by the Law of Nature or Nations, if any King ſhould go about generally or at once to invade the Liberties and Properties of their People, they might not *lawfully* be *reſiſted*: For, as I ſaid before, even a *Slave*, when manumitted by his Patron, may lawfully defend his Liberty againſt him, if he goeth about to take it away, and reduce him again into Slavery. So likewiſe, in the ſame State of Nature, if a Prince freely grant his Subjects a ſettled and hereditary Property in their Eſtates, they have likewiſe a Right to defend them againſt him or any other, that would endeavour by force to take them away: For he that in this State grants any thing to another, grants him likewiſe a Right to keep it, whether the Donor will or not, or elſe it were indeed δῶρον ἄδωρον: For he that in the State of Nature grants another Man any thing to be poſſeſſed or enjoyed only as long as he himſelf, or his Heirs, ſhall think fit, doth in effect grant him as good as nothing; ſince he may alter his Mind to morrow, and demand it again, and take it away the very next day. So that if you will grant, that Subjects have ſuch a Right to their Eſtates, as that the Prince cannot without manifeſt Violence or Injuſtice take them away, you muſt likewiſe grant, that they have alſo a Right to defend them.

T. T. C. c. 19. But I ſuppoſe you will not deny that Right, that all Men have to their Civil Properties in all our *European* Kingdoms and Commonwealths, tho' never ſo abſolute: But your Objection againſt the Subjects defending it by force, if it be invaded, is, that it may cauſe Rebellion and Confuſion. I grant indeed, it may ſometimes occaſion Civil Wars or inteſtine Commotions, if the People, finding their Liberties and Properties notoriouſly invaded, ſhall oppoſe the unjuſt Violence of thoſe who, contrary to the Truſt repoſed in them, do thus violently invade them: Therefore (forſooth) if this Doctrine be allowed, it may prove deſtructive to the Peace of Kingdoms and Commonwealths, and conſequently to the Good and Happineſs of Mankind: But methinks you might as well have argued, that honeſt Men might not reſiſt Robbers or Pirates, becauſe it may occaſion Diſorder and Bloodſhed: If any Miſchief come in ſuch caſes, ſure it is not to be charged upon him who defends his own Right, but on him that invades another's. If the innocent

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honeſt Man muſt quit all he hath, for quietneſs ſake, to him who will lay violent hands upon it, I deſire it may be conſidered, what a kind of Peace there will be in the World, which would conſiſt only in Violence and Rapine, and which would be maintained only for the benefit of publick Robbers and Oppreſſors.

M. But pray, do you make no difference between a Knot of Thieves and Robbers, and the Civil Government of a Monarch or Commonwealth, which I ſuppoſe may very well be maintain'd without any Hereditary Property in Lands, as you have granted? And it were much better, in my mind, to forego theſe outward things, than reſiſt the Civil Government, which is the *Ordinance of God*, as you your ſelf acknowledge.

F. I think the beſt way to end this Controverſy, will be, to deſire you to give a Definition of Civil Government, that we may know what we mean by it; therefore pray will you give me an eaſy and plain Definition of it?

M. Well, Sir, I ſhall comply with your Deſires: I then take Civil Government to be *an Authority conferred by God on one or more Perſons, to make Laws for the Benefit and Protection of the Subjects, and to inflict ſuch Puniſhments for their Tranſgreſſion, as they ſhall think fit, and by the Subjects Obedience and Aſſiſtance to protect them againſt foreign Enemies, and alſo to appoint what Share of Civil Property each Perſon in that Commonwealth ſhall enjoy.*

F. Sir, tho' your Definition be ſomewhat lame, yet I am pretty well contented with it, only I will ſhew you by and by wherein it is deficient. The firſt, and therefore chiefeſt Branch or Office of Civil Magiſtrates, is, to make Laws for the Benefit and Protection of the Subjects: Is it then a Branch of this Power, to ſend Soldiers or Dragoons to take away their Liberties, Lives or Eſtates? This ſure is directly contrary to their Duty, and that Truſt which God hath conferred upon them. Let us go on to the next Branch, the Infliction of Puniſhments for the Tranſgreſſion of ſuch Laws: Is this a Part of Civil Government, not only to ſend their Soldiers and Officers to take away their Subjects Lives and Eſtates, but alſo to let the moſt capital Offenders or Robbers paſs unpuniſh'd, when they have done? If you maintain theſe to be the Prerogatives of Civil Government, or that to be Civil Government where theſe things are commonly practiſed, you may, even with Mr. *Hobbs*, ſet the great Leviathan free from all Obligation to his Subjects, any further than he ſhall think fit for his own Intereſt, and make them always in a State of Nature, that is, (as he ſuppoſes) of War with them; and then pray tell me, whether ſuch a State can be the Ordinance of God, or not? But to come to the laſt Branch of your Definition (and in which alone I think it deficient) the appointing what Share of Property each Perſon in that Commonwealth ſhall enjoy: Tho' I grant it may be the Prerogative of Civil Governments to appoint this at firſt, yet are they likewiſe obliged to maintain this Property, when it is once inſtituted; and the People have as much Right to it as any King can have to his Crown, *viz.* the Civil Law of that Country, or Conſent of the whole Nation: And therefore if, according to King *James* the Firſt's Rule, *a King of a ſettled* (or limited) *Kingdom will break all the Laws thereof, and degenerate into a Tyrant*, unleſs ſuch *Tyrant* be the *Ordinance of God*, he may certainly be ſo far oppoſed: For what can Pirates or Robbers do more than his Officers and Guards by his Commiſſion? The former can but murder Men, raviſh their Wives, burn their Houſes, and take away their Eſtates; and if the latter may do ſo too, pray where is the difference? Or what Satisfaction is it to me, that I am ruined by one Man having the King's Commiſſion, or by another that ruins me without it? ſince I am ſure God hath given the one no more Authority to do it than the other. If then this unlimited Power be neither conferred by God nor Man upon the Civil Magiſtrates, I would fain know any Reaſon why Thieves and Pirates may be reſiſted, but their Inſtruments may not, that do the ſame things? And why, when Civil Authority exceeds its utmoſt bounds, the State of Nature or Self-defence may not take place; ſince the Civil Government is as much diſſolved by ſuch violent Actions, as if a foreign Enemy had broke in, and conquered the Country?

But to anſwer your Query, whether I think a Civil Government may not be where there is no ſettled Property in Eſtates, and whether the Eaſtern Monarchies are not Civil Governments? To this I anſwer, that I have *Ariſtotle* on my ſide, who not without Reaſon affirms, that the Government of one Man, where there is no Civil Property, and where all Men are Slaves, is not Civil Government,

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but that of a Master of a great Family over his Slaves: And tho' I grant, that they may have some shew of Civil Government among them, as in a Plantation, where one of the Slaves may complain to the Master against another, for any Injury or Wrong done him; yet is not this Property Civil Government, any more than that of the Master of a separate Family, who looks upon himself as absolute Lord over all his Slaves, allowed him by God, only for his Benefit and Grandeur, and not he instituted (as all Civil Powers are) for the Good and Preservation of the Subjects.

M. But methinks you seem herein to condemn the Government of *God's own People* the *Jews*, which no doubt was an *Absolute Monarchy*, and that restrained by no Laws, except what God had expressly prescribed them: And yet you see, notwithstanding *Samuel* told them, that their Kings should take away their *Fields and their Vineyards*, and give them to his Servants, and take their Sons and Daughters to be his Servants or Slaves; yet God leaves them no Power to resist them for so
1 Sam. 8. 18. doing; but all the Remedy left them is, that they should *cry out in that Day, because of the King which they had chosen, and the Lord would not hear them*; that is, there was no Remedy left them but Patience.

F. I have already given you my Sense of that Place, and I shall speak more particularly to it, when you shall come to those Texts of Scripture, that you said you would produce for *Absolute Subjection* and *Non-resistance*: And therefore at present I shall only here shew you what the Earl of *Clarendon*, in the above mentioned Survey of the *Leviathan*, *cap.* 19. hath very prudently as well as honestly said con-
Pag. 74. 77. cerning this Text. "They who will deduce the Extent of the absolute and illi-
" mited Power of Kings from that Declaration by *Samuel*, which indeed seems to
" leave neither Property nor Liberty to their Subjects, and could be only intended
" by *Samuel* to terrify them from that mutinous and seditious Clamour; as it
" hath no Foundation from any other Part of Scripture, nor was ever practised or
" exercised by any good King, who succeeded over them, and was blessed and
" approved by God; so when those State Empiricks (of what Degree or Quality
" soever) will take upon them to prescribe a new Diet and Exercise to Sovereign
" Princes, and invite them to assume new Powers and Prerogatives over the Peo-
" ple, by the Precepts, Warrants, and Prescriptions of the Scriptures; they
" should not presume to make the Sacred Writ subject to their own private Fancies.
So likewise in a Leaf or two before he speaks much to the same purpose: "That
Pag. 74. " what *Samuel* had said was rather to terrify them from pursuing their foolish De-
" mands, than to constitute such a Prerogative as the Kings should use, whom
" God would appoint to go in and out before them; which methinks is very ma-
" nifest, in that the worst Kings that ever reigned over them never challenged or
" assumed those Prerogatives: Nor did the People conceive themselves liable to
" those Impositions, as appears by the Application they made to *Rehoboam*, upon
" the Death of *Solomon*, that he would abate some of that Rigor his Father had
" exercised towards them; the rough Rejection of which Request, contrary to
" the Advice of his wisest Counsellors, cost him the greater Part of his Domi-
" nions: And when *Rehoboam* would by Arms have reduc'd them to Obedience,
" God would not suffer him, because he had been in the fault himself." From whence you may conclude, that this Great Man did not think *all Resistance unlawful*, in case of general and intolerable Oppressions.

M. I shall give you my Opinion farther of what you have now said, when you have told me more plainly in what Cases you allow *Resistance* of the *Supreme Powers*, and in what not. For till you have been more clear in this matter, I cannot tell what Judgment to make of your Tenets.

F. I thank you for putting me upon so fair a Method: And therefore that you may not mistake me, and suppose that I would go about to allow *Subjects* to *resist*, and take up Arms against the Supreme Power, upon any less Occasion than an *absolute Necessity*, and apparent Danger of being destroyed, and ruined in their Lives, Liberties, and Estates: First therefore, considering that the Corruption of Humane Nature is such, that no sort of Government whatsoever can continue long, without some Inconveniences and Mischiefs to particular Men; nor that any Man, either *Prince* or *Subject*, was ever Master of such perfect Wisdom and Goodness, as always to perform his Duty so exactly, as never to offend: I do in the first place grant, that it would be both *undutiful*, as well as *unjust*, for Subjects to rebel against their Prince for his personal Failings or Vices: *Undutiful*, since the

Prince

Prince may be oftentimes an ill Man in his private Capacity, and yet a good Governor, in respect of the Publick; and also *unjust*, since neither do we ourselves exactly perform our Duties towards the Supreme Powers (or to one another) as we ought: And therefore it is highly reasonable for Subjects to endure, and pass by the personal *Faults* or *Failings* of Princes, in consideration of that Protection and Security in their Lives and Fortunes, which they do enjoy under them; since it hath been found by Experience with how great a Slaughter of People, and how great a Confusion, and Danger of the whole Commonwealth, evil Princes have been resisted, or turn'd out of their Thrones. And therefore, I grant the *private Injuries* of Princes are to be pass'd over, in consideration of that *great Charge* they undergo; and for those greater Benefits we receive from their Government; but chiefly for the publick Peace of the Commonwealth, or Civil Society. And therefore, I own it is very well said by that Master in Politicks, *Tacitus*, *That the ill Humours, or Dispositions of Kings are to be born withal, and that often Mutations of Governments are of dangerous Consequence.* And he wisely introduces *Ceriales* speaking to this purpose to the Rebellious *Treveri*: *That they ought to bear with the Luxury and Avarice of Rulers, as they do with immoderate Showers, and other unnatural Evils; since there will be Vices whilst there are Men, yet neither are these continual, but are often recompenced by the Intervention of better.*

But I will now particularize those Cases wherein I do absolutely disallow, and disclaim all Resistance in Subjects against the Supreme Powers.

1. I deny all Resistance to Subjects against their Princes, or Supreme Magistrates, in all such Actions, or Prerogatives, which are absolutely necessary to the Exercise of their Supreme Power, *viz.* of protecting and defending their People; as also against those who are commission'd by them for the Execution of such Powers.

2. I condemn all Rebellion against Princes, or States, meerly on the Score of Religion, or because they are not of the Religion of their People, or Subjects, if there be no positive Law extant, disabling or forbidding Princes, or other Magistrates of different Religions than that of their People, from being admitted to the Throne, or Government.

3. I look upon it as Rebellion in the People, tumultuously to rise up in Arms to alter, or reform the Religion of the Nation, or Kingdom, already established by Law, without the Consent of the Legislators.

4. I disclaim all Resistance, or Self-defence in Subjects, upon the account that the free, or publick Exercise of that Religion they profess, is not allowed them by the Legislative Power of the Kingdom, or Nation, provided that such Supreme Powers do not forbid, or hinder the People professing such a different Religion, to sell, or transport their Estates, and Persons into any other Country where they please.

5. I deny Resistance to Subjects against their Princes or Governors upon pretence of any personal Vices; as because they are wicked, atheistical, cruel, lustful, or debauched, provided they generally protect their Subjects in their Lives, Liberties and Properties.

6. I deny this Right of Resistance to any particular Person less than the whole Body, or major part of the People; or at least such a considerable Portion of a Nation, as are able, when assaulted or oppressed in their Lives, Liberties or Estates, to constitute a distinct, and entire Kingdom or Commonwealth of themselves.

7. I look upon it as wicked, and rebellious for any private Subjects to assassinate, murder or imprison their Monarch, or other Supreme Governor, since no private Person whatever ought to lay violent Hands upon his Prince, whose Person ought to be sacred, and in no wise to be violated, unless he put off the Character of a Prince, and actually make War upon his People. But if in this Case he happen to be resisted, and perish in the Attempt, he falls not as a Prince, but as a common Enemy, by breaking the Original Compact with his People, and entring into a State of War against them: As a Father who unjustly makes War upon his Children, may be, (as I have already proved at our first Conference) resisted by them in the State of Nature.

But

But as for all other Grievances, or Oppreſſions, if they are of that Nature as may ruin the whole *Commonwealth*, yet not ſuddenly, but after ſome time, and often repeated, I cannot allow ſuch Grievances, or Oppreſſions, as a ſufficient Cauſe of *Reſiſtance*: For as on the one hand, there is no Inconvenience ſo ſmall but in proceſs of Time it may turn to the Ruin of the Commonwealth, if it be often repeated, and exceſſively multiplied; ſo on the other ſide, length of Time produces ſo great Changes, that the Nature of theſe Encroachments or Injuries are not ſufficient to juſtifie *Reſiſtance*, and the Breach of that Peace and Unity in a Commonwealth, which muſt neceſſarily follow by entering into a State of War.

To conclude: I do not in any caſe whatever allow of *Reſiſtance*, but only in theſe three neceſſary ones: When the Lives, Liberties, or Eſtates of the whole People, or the greateſt part of them, are either actually invaded, or elſe taken away; and when they are reduced into ſo bad a Condition, that a State of War is to be preferred before ſuch a Peace; and laſtly, when the end of Civil Government, being no longer to be obtained by it, the Commonwealth may be look'd upon as diſſolved.

M. Though you have been pretty long in treating of this Matter, yet I did not think it tedious; ſince I confeſs you have given me honeſtly enough (and ſo far I agree with you) all thoſe Caſes wherein you ſay it is unlawful for Subjects to take up Arms, or reſiſt the Supreme Powers: But I wonder you have not added one Caſe more, which divers Authors, that are high enough againſt *Non-reſiſtance* in other things, do yet allow to be a ſufficient Cauſe of taking up Arms, and reſiſting their Prince: And that is, when he actually hath, or goeth about to *alienate*, or make over his Dominion and Subjects to ſome foreign Prince or State.

F. I am not ignorant of what you ſay, but I thought it not worth ſpeaking of; becauſe in abſolute *Monarchies* (which we are now treating of) if ſuch Kingdoms are Patrimonial, and that the Monarch hath ſuch an abſolute Dominion over his Subjects, as neither to let them enjoy any Liberty in their Perſons, nor Properties in their Eſtates, but at his Pleaſure, I cannot ſee any Reaſon why ſuch a Prince may not alienate his Dominion over ſuch a Kingdom and People, as well as any private Man may his Property in his Eſtate: Nor have the People any cauſe to be concerned at it, ſince they can then likewiſe be but Slaves, and enjoy nothing but at their Prince's Pleaſure, as they did before; ſo that whether he, or a Stranger govern them, it is all one as to their Circumſtances. But yet under ſuch Governments as are not abſolute, where the People enjoy their perſonal Liberties and Properties in their Eſtates, the Caſe may be much otherwiſe; ſince they may not be ſure, that the foreign Prince, to whom their own Monarch, or other Supreme Powers, hath aſſigned them, will maintain their Liberties and Properties as the former did. And therefore not being Slaves before, they cannot be *alienated* without their own Conſents, and conſequently they may take up Arms, and defend themſelves if they are able; unleſs the Prince or State, to whom they are ſo alienated, will give them the like Aſſurance to preſerve their Lives, Liberties and Properties, as their former Governors did. And therefore I do conceive the People of the Iſlands of *Cyprus* and *Candy* might very well have refuſed to become Subjects to the *Grand Seignior*, in caſe the *Venetians* ſhould have ſold or alien'd their Dominion over them, before he had actually conquer'd them. But in limited, or Hereditary Kingdoms, which are ſo by their Fundamental Conſtitution, I ſuppoſe, the Prince cannot, upon any account whatſoever, make over his Dominions to a foreign Prince without the Conſent of his People, and next Heir. And therefore (granting the Story to be true), I doubt not but the People of this Kingdom might very well have oppoſed King *John*, if he had gone about to have ſubjected it to the Dominion of the Emperor of *Morocco*, upon Condition that he would aſſiſt him with an Army of *Moors* to ſubdue his *Barons*, and *Nobility*, then in Arms againſt him.

M. I confeſs it is not worth while to diſpute about that which ſo ſeldom happens, and is indeed almoſt impoſſible to be put in practice; and therefore I ſhall not much oppoſe you in what you have ſaid upon this Caſe; yet, that I may be as good as my Word, and give you my Judgment concerning what you have lately ſaid, I muſt freely tell you, that as it may happen, that a Prince or State may ſometimes abuſe their Power, ſo as to take away the Liberties and Eſtates

of

of all their Subjects, as you have set forth, (and which I confess is a very great Mischief) yet upon second Thoughts, I think it were much better that this Inconvenience should be suffered, rather than the worse Mischief of leaving Subjects to be the sole Judges, when their Liberties and Estates are invaded, or like to be taken away; nay, every private Subject would be first Judge of it, or else the whole People could never come to pass their Judgment upon it, which would leave too great a Latitude for turbulent and rebellious Spirits to make Disturbances in Kingdoms and Commonwealths; especially, if there be any small Grievances on the Subjects; especially too, if they touch at those things they account their Hereditary Liberties and Properties. These, (though never so small) if the People are suffered to be their own Judges, (as you make them to be in their own Case) will soon be aggravated, and blown up to intolerable Oppressions of, and Invasions upon their Liberties and Properties, when indeed they are not. This is a pernicious Doctrine; for it will be a perpetual Cause of Quarrels, Civil Wars, and Rebellions, which would turn all Commonwealths, tho' never so well constituted, into Anarchy and Confusion. So that as you have stated this Question, you have broached a Principle highly destructive to all Civil Government: For if all, or any of the People, may resist or rebel (call it what you please) whenever they think themselves oppressed in their Liberties and Estates, *L. O.* this is for them only to be obedient, when they think themselves well governed; but stubborn and rebellious, when they believe they are not; which would be to make all Government precarious and conditional, and the People not only Parties, but Judges, and Executioners too in their own Case, how far these Conditions are observed on the Governor's part; and then the Regularity or Irregularity of the Administration will no longer be the Question, but the Validity of the Power to command. And there wants no more to dissolve such a Government, than for *Dick*, or *Tom*, and every *Rascal* of *the Mobile* to say, This or That is destructive to the People's Liberties and Properties, and therefore an insupportable Grievance and Oppression. And if you will once allow any number of the People, though never so many, to judge this, or that Law, or Order of the Government, not to be for their Good, and that they may likewise resist and right themselves by Arms, whenever they thus fancy, they will quickly come to say, that the Government it self is not for their Good neither. And upon this ground all the *Rebellions*, raised by an incensed, and mistaken Multitude against the Government in all Ages, may easily be justified; and *Wat. Tyler*, and *Massianello* shall be so far from being Rebels, that they may pass in future Ages for Heroes, and noble Assertors of the People's Liberties. And I hope you will believe, I do not speak this out of any Liking or Approbation of Tyranny; or that I desire that Princes should stretch their Power to the utmost, to invade their Subjects Liberties or Estates; but only to let you see, how far your Principles may serve the Pretences of wicked Men to set whole Kingdoms together by the Ears, whenever they find the People so far discontented with the Government, as to believe their malicious and wicked Insinuations: Of all which those long and cruel Civil Wars, and Rebellions, which for several Years tormented, and almost ruined these three Kingdoms, are too late, and sad Examples.

F. I confess, Sir, you have made a very pathetick Speech, and exerted, I suppose, the utmost Strength of your Reason and Eloquence on this Subject; for you have made the Consequences of this Principle, *viz.* (*That the People may judge when their Liberties and Properties are invaded*) to seem very dreadful. But after all, it is no more than what you have urged in great part already: And the main Strength of your Argument lies here, that if the People should take upon them but once to *judge* when they were notoriously injured or oppress'd, and thereupon take Arms to right themselves; they would soon make bold to put this Power into Use and Practice, when they had no occasion for it at all, or at least not sufficient to make any open Insult. But to shew you that there is no need of such an infallible Judge, as you suppose, to be necessary in a Commonwealth, any more than there is in the Church; pray tell me, Sir, would it not have been very convenient, if Christ had appointed an *infallible Judge* (be it the *Pope*, or *General Council*, or both together) to decide all Controversies in Religion, and to whose Judgment all People ought to submit?

M. I cannot deny, but it would have been a very ready way to end all Diſputes about Religion; but ſince God hath not thought fit to appoint any ſuch Judge, it were very great Preſumption in us to ſet up one to pleaſe our Humour, ſince ſuch a one could have no Infallibility, unleſs it were given him from above.

F. You judge very well; and doth it not therefore follow, that ſince there is no ſuch infallible Judge, all Men ought to judge for themſelves of the Truth of their Religion; and alſo in the Chriſtian Religion, what Doctrines are agreeable to the Word of God, and what not? And yet you ſee that from the ill uſe of this Liberty have ſprung all the different Sects and Hereſies in the World. Does it therefore follow, that Men muſt not make uſe of this Liberty, becauſe they may abuſe it? So likewiſe, muſt Subjects judge in no caſe whatſoever, when the Supreme Power tyrannizes over them beyond what they are able to bear? And muſt they never reſiſt, or endeavour to caſt off this inſupportable Yoke, becauſe they may happen one time or other to be wanton, and believe themſelves oppreſs'd when indeed they are not?

M. I grant your Parallel would have ſomewhat in it, were the Conſequences of every Man's judging for himſelf in Matters of Religion as fatal to the Peace and Happineſs of Mankind, as your Doctrine of the Subjects judging when it is fit for them to reſiſt the Supreme Powers: For I do not at all debar them from the Right of judging when they are oppreſs'd, or ill uſed by them, for that may very well conſiſt with the Publick Peace; but I utterly diſallow all manner of *Reſiſtance by Force*, becauſe it tends, not only to diſſolve all Civil Government, but to diſturb the common Peace and Safety of Mankind.

F. Notwithſtanding your Diſtinction, the Parallel will hold in both Caſes; for are not Differences in Religion as fatal to the Peace and Unity of the Church, as the Subjects judging when they are oppreſs'd, and thereupon taking up defenſive Arms, can be to that of a Civil State? And do not more Wars, and Quarrels ariſe about Mens Differences in Religion, than from any other Cauſe you can name? So that if the Peace of the Church were a ſufficient Cauſe for ſuppoſing a certain, or infallible Judge in Religion, there would be the ſame Reaſon to ſuppoſe it in Civil Matters too. And therefore your Argument from the abuſe of this Liberty of the Subjects judging when they may reſiſt, is of no more force in one Caſe than the other: For I grant it may ſo happen in a Civil State, as well as in an Eccleſiaſtical, that the Subjects may riſe up, and reſiſt their Civil, as well as Spiritual Governors, without any juſt Cauſe; doth it therefore follow, that God hath wholly delivered up Mankind to the domineering Humours of Men in Power, let them abuſe it never ſo groſly? And therefore we muſt not be wiſer than God Almighty himſelf. And when he hath not appointed any certain, and infallible Judges, either in Civil or Spiritual Matters, without any Contradiction, or Reſiſtance, we ought not to ſuppoſe a Neceſſity of ſuch Judges, meerly becauſe of ſome Inconveniences, which may perhaps often happen from the abuſe of that Chriſtian Liberty he hath given us. For then, I doubt, you will find the Remedy would be much worſe than the Diſeaſe; as if, to avoid Hereſies, we ſhould ſet up the Pope for an infallible Judge. So would it be likewiſe, if, to avoid Civil Wars, and Rebellions, we ſhould ſet up the Supreme Magiſtrate (as Mr. *Hobbs* hath done) for a certain and irreſiſtible Judge of whatſoever Means are neceſſary for the People's Quiet and Preſervation; ſince I have already proved, that an inſupportable Tyranny is not Civil Government; and that the Supreme Powers can no more alter the Nature of Things, but their own Laws or Edicts, than they can ordain Poiſon to be uſed, inſtead of wholeſome Food, by the People.

M. I confeſs what you have now ſaid carries ſome weight with it; and my own carnal Reaſon doth very much incline me to your Opinion, were it not for two things; the one (as I ſaid) is the horrid Rebellions that have, and may again ariſe in theſe Kingdoms from this Principle; which hath made God ſo ſtrictly forbid *all Reſiſtance of the higher Powers*, upon any account whatſoever: And therefore you are much miſtaken when you aſſert, that *Reſiſtance*, though for *Self-defence*, is one of the *Liberties* that God hath left us; ſince certainly he would never ſo ſeverely have forbidden it, but that he not only knew how prone Men's corrupt Natures were to Rebellion, but alſo foreſaw the fatal Conſequence of it.

F. If

F. If God's Commands in Scripture be the greateſt Argument you have againſt all Reſiſtance whatever, I doubt not but to ſhew you (when we come to it) that you, as well as others, are miſtaken in that ſtrict Interpretation of thoſe Places of Scripture. And as for the evil Conſequences you ſuppoſe may follow from this Doctrine, I doubt not likewiſe but to convince you, that much worſe will follow from the irreſiſtible Tyranny of the Supreme Powers, than ever have happened from the *dreadfulleſt Rebellions.* And therefore, I deſire you to take Notice, that what I have now ſaid is not out of any deſign to juſtifie ſo horrid a Crime as I grant *Rebellion* to be, or to incite Subjects to be guilty of it; but only to hinder Civil Government from being deſtroyed, and Mankind from being made miſerable.

For I have firſt aſſerted, that no Reſiſtance whatever is to be made in abſolute Governments, but in thoſe Caſes in which the main Ends of Civil Government are viſibly deſtroyed, or ſo near it, that there is no other means left but Reſiſtance to prevent it. And then, when things are once brought to this paſs, it is not the People that make this War, but the Governors, who by their Tyranny have brought the Commonwealth into this Anarchy and Confuſion you ſo much dread; ſo that it is not the People, but they that are the Aggreſſors.

And as for the ill uſe that may be made of this Doctrine, to ſtir up the People to Rebellion, when they have no juſt, or ſufficient Provocation to reſiſt: This will not prove of that dangerous Conſequence you imagine, if you will but conſider, that I do not allow this Reſiſtance in any Caſe, but when the Violence, or Oppreſſion of the Governors is ſo evident, and inſupportable to all the People that groan under it, that no indifferent Man in his Senſes will be able to deny it; for as long as it remains diſputable, whether or no the People are ſufficiently oppreſs'd in their Liberties or Eſtates, the Truſt repoſed in the Supreme Magiſtrates makes them the ſole Judges of the Neceſſity of ſuch exorbitant Actions, as being intruſted by the People as Men ſuppoſed to be both wiſe and good, and themſelves ignorant in divers Caſes of the true means of their own Preſervation; and the Supreme Powers remain the ſole Judges, I ſay, as long as the Caſe is doubtful or uncertain.

But ſince you have already acknowledged, that the People might judge (if ſuch a Caſe ſhould happen) whether the Prince, or other Supreme Magiſtrate, makes actual War upon them, I would very fain know why the People cannot as plainly diſtinguiſh when he ſends his Guards, or Dragoons, to take away their Lives and Liberties, or to turn them out of their Eſtates: And 'till this be done, and the Tyranny ſo evident, general, and inſupportable, that it is paſt all Queſtion, I grant that the People ought to have Patience, and rather ſuffer many Oppreſſions and Hardſhips, than put themſelves into a State of War. So that I think it is *morally impoſſible*, that the People can be miſtaken in ſo evident a Caſe. Nor I believe can you ſcarce ſhew me one Example, either out of antient or modern Hiſtory, of any whole Nation or People, or the major part of them, that did ever riſe in Arms to caſt off either a Foreign or Domeſtick Yoke, which preſſed too hard upon them, but when they had the moſt unavoidable and juſteſt Cauſes ſo to do. And I believe I can ſhew you ten Examples out of Hiſtories, (if the Queſtion were to be decided by them) for one you can ſhew me to the contrary. 'Tis true, ſome private Men may ſometimes make Diſturbances, or Rebellions, but 'tis commonly to their own juſt Ruin and Perdition: For 'till the Miſchief be grown general, and the Violence of the Rulers become evident, and their Attempts to deſtroy, or (make Slaves of them, are moſt ſenſible to all, or the greateſt part of the People, they are commonly more a great deal diſpoſed to ſuffer, than to right themſelves by *Reſiſtance*, well knowing the Miſchiefs of War, and how deſtructive it will prove, not only to their Lives, but to the Welfare of their Families and Poſterities, as well as private Concerns. So that the Example of ſome particular Injuſtice, Oppreſſion, nay, abſolute Ruin of here and there an unfortunate Perſon, moves them not. But if once they find their Lives, Liberties and Eſtates, univerſally aſſaulted, and about to be taken away, who is to be blamed for it; the Magiſtrate, or the People? For the former might have avoided it, if they had pleaſed, either by not urging them to that Extremity at all, or at leaſt redreſſing thoſe Grievances and Oppreſſions before they became ſo general, and inſupportable, as not to be any longer endured.

So that, though I grant, the Ambition, or Turbulency of private Men have ſometimes cauſed great Diſorders in Commonwealths, and Factions have been fatal to States and Kingdoms; yet whether this Miſchief hath oftner begun from the People's Wantonneſs, and Deſire to caſt off the lawful Authority of their Rulers; or from the Rulers Inſolence, and Endeavours to get, and exerciſe a Tyrannical, Arbitrary Power over their People; that is, whether Oppreſſion or Diſobedience gave the firſt Riſe to the Diſorder, I leave it (as I ſaid) to impartial Obſervers of Hiſtory to determine.

But this I am ſure of, whoever (either Ruler or Subject) goes about by force to invade the Rights of either Prince, or People, and lays a Foundation for overturning the Original Conſtitution and Frame of any Civil Government, he is guilty of the greateſt Crime I think a Man is capable of, being to anſwer for all thoſe Miſchiefs, Bloodſhed, Rapine, and Deſolations which the breaking to pieces of Governments does bring on a Country. And he who doth it is juſtly to be eſteemed a common Enemy, and is to be treated accordingly.

But as for the Inſtances you give of *Wat. Tyler*, and *Maſſianello*, I grant indeed it may ſo happen, that a great part of the common People, or Rabble, may ſometimes upon ſudden, or falſe Apprehenſions, occaſioned by ſome real Grievances or Oppreſſions, ſuch as are great Taxes, or Gabels impoſed by the State, take up Arms, and rebel againſt the Supreme Powers: Yet theſe Examples do not reach the Queſtion in hand; theſe Inſurrections or Rebellions you mention, being of a much leſs number than the whole People, or the major part of them; and in which I ſtill include the Nobility and Gentry, and other Landholders, as the moſt conſiderable part. And ſo thoſe Inſurrections were in no wiſe juſtifiable, eſpecially in ſuch a Government as ours, where no Man can be taxed but by his own Conſent, included in his Repreſentatives; whereas all theſe Rebellions were chiefly (if not altogether) made by the meaner ſort, or Scum of the People, of one, or a few Countries, whom I can never allow to make Diſturbances; ſince they, having very little to loſe, ought, in all Civil Governments whatſoever, to be directed and governed by thoſe, in whom the Ballance of the Government in Lands, and other Riches, doth reſide, and on whom they chiefly depend for their Protection and Subſiſtence; and conſequently ought to make no Alterations in the State without their Conſent and Approbation.

But as for your other Inſtance, of the Wars raiſed in theſe three Kingdoms againſt King *Charles* the Firſt, upon the Pretence of our Religion, Liberties and Properties being invaded, it is not proper to be treated of in this place; ſince we are now diſcourſing of the Power of Princes, and the Right of Subjects under abſolute, and not limited Monarchies: And I grant, that ſome Reſiſtance may be Rebellion under abſolute Monarchies, which would not be ſo under limited ones; yet I do ſtill ſuppoſe that it may be lawful under ſuch limited Monarchy for the People to take up Arms, and make Reſiſtance in defence of of thoſe juſt Liberties and Privileges which they lawfully enjoy, either by the Original Conſtitution of the Government, or by Acts of Grace, or Conceſſion of the Prince: But this requires a more large and accurate Diſcourſe, which at another time I am ready to give you. Therefore, granting at preſent, that thoſe Wars were downright Rebellion againſt the King; and alſo that they were made under Pretence of the Principle I now aſſert, yet doth it not at all overthrow the Juſtice of that Cauſe which I now maintain; ſince (as I have already more than once intimated) the abuſe that may be ſometimes made of a natural Right by ſome wicked, factious or hypocritical Men, ought not in the leaſt to prejudice the Exerciſe of that Right to all the reſt of Mankind, who may lie under a real Neceſſity of making uſe of it.

To conclude: If the People may never be truſted to judge when their Liberties and Properties are actually invaded, becauſe they may happen one time or other to be miſtaken, and ſo enter into a State of War, without Cauſe, to the Deſtruction of Mankind, this Argument would ſerve as well againſt all Princes and Commonwealths; who, being in the State of Nature with each other, ſhould never make War for any Cauſe or Provocation, how great ſoever; becauſe being Judges and Executioners too in their own Caſe, they may more eaſily happen to be miſtaken. I ſuppoſe you yourſelf will grant, that one, or a few Men are more apt to be in an Error, than a Hundred thouſand. And I have

already

already proved, that where the People have never wholly given up their Liberties and Properties unto the abſolute Will of the Supreme Powers, they are, as to that, ſtill in a State of Nature, and do reſerve to themſelves a Right of judging when they are violently and inſupportably invaded; and conſequently of vindicating themſelves from that Oppreſſion. And therefore, granting what you have ſaid to be true, that the People may ſometimes happen to abuſe this natural Right of judging, and reſiſting, by exerting it, when there is no real and abſolute Neceſſity: So on the other ſide, if they are wholly debarred from it, becauſe they may happen ſometimes to abuſe it, the freeſt People in the World, *viz.* (our ſelves, for Example) may eaſily be reduced into a Condition of abſolute Slavery and Beggary, and that without all Remedy by any humane Means that I can think of; and which is the worſt Miſchief of theſe two, I leave to your ſelf, or any indifferent Man to judge.

M. If you will have my Opinion in this point, I muſt freely tell you, that it is a hard Matter to find out a Miſchief ſo deſtructive to the People, and which they ſhould exchange for this miſerable State of War, which you ſuppoſe may prove ſo beneficial to them; and yet I doubt, if it be thoroughly looked into, not only the Doctrine itſelf, but alſo the laſting Wars and Miſeries it may produce, would ſufficiently prove the contrary; ſince the cruelleſt Tyranny, Slavery, and Loſs of Eſtates, or any thing elſe almoſt, may be better born with in Peace and Unity, than a Civil War with the greateſt Liberty and Plenty; ſeeing all ſuch Comforts would quickly be devoured, like *Pharaoh's* fat Kine, by ſuch a cruel Monſter feeding in their Bowels. And therefore, ſince Civil War is one of the greateſt Calamities and Puniſhments that God uſes to ſend upon a Nation, it ſeems evident to me, that the Welfare of any State, or People requires them to be obedient unto the Supreme Powers, though they be never ſo great Oppreſſors, or cruel Tyrants. For when once they enter into this diſmal State of War, who can tell whether it will have an end, without almoſt the total Deſtruction of the Nation, or at leaſt by bringing them into a far worſe Condition of Slavery and Suffering, than they were before; ſince the State of Princes, or other Supreme Powers, can never be ſo mean and inconſiderable in the World, as not to find, when like to be oppreſs'd by ſuch Inſurrections and Rebellions of their Subjects, ſufficient Aſſiſtance from neighbouring Princes, or States; who, making the Cauſe of ſuch a Prince their own, will be ſure to aſſiſt him to the utmoſt of their Power; it being found true by Experience, as *Tully* long ago obſerved, "That the afflicted State of Kings does eaſily draw the Help and Pity "of many others, eſpecially of thoſe, who are either Kings themſelves, or do "live in a Kingdom, the Regal Name being by them eſteemed to be great and "ſacred." *Cicero Orat. pro lege Manil.* And farther, how ready a way it is to ſubvert the State of any ſuch diſtracted Kingdom, and to bring it under the Subjection of Foreigners, we need not ſeek a plainer Proof, than by an Example no farther off than *Ireland*; where *Dermot*, King of *Leinſter*, being forced by his rebellious Subjects to crave the Aid of King *Henry* the Second for his Reſtoration to his Kingdom, his Aſſiſtance to recover his Right produced that effect which we now ſee, *viz.* That the *Iriſh* loſt their Dominion, and became ſubject to the Crown of *England* even to this Day.

And ſuppoſing, that the Subjects might likewiſe be aſſiſted by ſome foreign Prince, who would undertake their Deliverance, they would not be in a much better Condition; ſince, if he were an abſolute Monarch himſelf, he would be ſure, for Example ſake, as well as for their own Security, to carry as ſtrict a Hand over them, and uſe them more ſeverely than their own Prince had done before; and, I doubt not, but if *Lewis*, Prince of *France*, had been crowned King of this Kingdom, as he was very near it, toward the latter end of King *John's* Reign, but that he would have been more cruel and tyrannical than ever King *John* had been before: So that they would have got nothing by the Bargain, but a Change of Maſters, and a heavier *Yoke* impoſed upon them by a Foreigner.

And ſo much the Viſcount *Melun* confeſſed upon his Death-bed to many of the *Engliſh* Nobility, which was the Reaſon of their returning again to their Allegiance to *Henry* the Third. So that I think it had been much better for the Barons and Nobility of this Kingdom never to have ſtirred or rebell'd at all againſt their lawful Prince.

F. You

F. You ſeem ſo in love with Slavery, and all the Conſequences of it, that it is a hundred pities but that you ſhould feel the ſmart of it a little while, provided no Body was to ſuffer by it but your ſelf and thoſe of your Opinion: But could you ſee the miſerable Condition thoſe poor People are in who live under Arbitrary and Tyrannical Government, I doubt not but you would be of another Mind, and prefer a War now and then, tho' never ſo violent, before ſuch a Peace; for when Men are once reduced to ſo deſperate a Condition, as neither to be ſecured of their Lives, Liberties or Eſtates, they may have ſome hope to redreſs themſelves by *Reſiſtance*, but need not fear to be reduced to a worſe Condition than they were before; and therefore I cannot underſtand how all the Comforts of a Civil Life would then be loſt by a Civil War, when I have already put it as a chief part of the Caſe, that *Subjects* are never to make ſuch a *Reſiſtance* but when the *Supreme Powers* are juſt about to begin, or elſe have actually enter'd into a State of War againſt their *Subjects*: For what can any foreign Enemy do more if he conquers them, than take away their Lives, Liberties and Eſtates? So that this is ſo far from being a State of Peace, that indeed the People are already expoſed to all the Calamities of War; but a War, which you ſuppoſe may be made without any *Reſiſtance*, whilſt the Subjects (forſooth) are bound to keep the Peace; but much ſuch another Peace as would be in a Houſe into which *Thieves* having broken, and the *Inhabitants* retiring into ſome upper Rooms, there ſtand upon their Guard and make Reſiſtance; whilſt the Thieves having ſeized upon all they have below, one of them ſhould make ſuch a Speech as this; *I pray Sirs come down and ſubmit your ſelves to us, for we aſſure you we intend not to kill you, but only to bind you and take away all you have; and is not Slavery and loſs of Goods better with Peace and Safety, than by aſſaulting us to provoke us to fire the Houſe and kill you all? for if you once enter into a State of War with us, it is very likely to end with your total Deſtruction; for if you continue to reſiſt us, or think to call in Company to your Aſſiſtance, we can likewiſe call in many more of our Party to come and help us; and then expect no Mercy.* Now pray tell me, would not this be a very rational Argument to move theſe People to come down and ſurrender themſelves to theſe Thieves, and partake of the Benefits of this excellent Peace they propos'd? and whether they would not tell them, that by ſhooting they would alſo call in the Neighbouring Town, who might be too ſtrong for all their fellow Thieves? Now if you will but take theſe honeſt People of the next Town for ſuch Neighbouring Princes or States, who may joyn in the Aſſiſtance of ſuch an oppreſs'd People, this Simile will fully anſwer your Argument of thoſe Neighbouring Princes that may take part with an oppreſſing Tyrant: And as for the conſequence of ſuch Aſſiſtance, on the one ſide or the other, that it may happen to bring them into a worſe Condition than they were before, *viz.* a Subjection to Foreigners (as I have put the Caſe) it can be no cauſe to deter the People from *Reſiſting*; for if they were (as I ſuppoſe) reduc'd to a Condition of Slavery before, and had loſt all their Liberties and Properties, how can we imagine them in a worſe Caſe than they are already? And it is all one to ſuch a People, whether their own or a ſtrange Prince did tyrannize over and oppreſs them: Nay, were I to take my Choice, I had much rather be tyrannized over and oppreſs'd by a Foreigner than from my own natural Prince; ſince the former coming in by Force, and without any precedent Promiſe or Compact, I lie wholly at his Mercy, who hath no Obligation upon him; and I had much rather, if I were to be a Slave, be ſo to a Stranger than to my own Father, if I were aſſured that both the one and the other would uſe me with like ſeverity. And to anſwer your Inſtance of your *Iriſh* King, I think that Nation hath been ſo far from loſing any thing by their Subjection to the *Engliſh* Government, that they have gained far greater Privileges and Liberties both for their Perſons and Eſtates, than ever they enjoyed under their own Princes; ſo that they are rather the better than the worſe by the Change. And beſides, the Example is not to the Point we diſcourſe of; the Quarrel being between two *Iriſh* Kings, where the ſtronger having injured the weaker, he called in the *Engliſh* to revenge his Quarrel; whereas the Queſtion here is concerning the like Action done by the People againſt their Prince. And as for your other Example of Prince *Lewis*, it is uncertain whether the Condition of the *Engliſh* Nation would have been either better or worſe under a *French* King. But thus much I am ſure of, that had King *John* proceeded in that Tyrannical Courſe againſt his Barons and the reſt of his

Subjects,

Subjects, they could ſcarce have been in a worſe Condition under the *French*; nay the *Moors* themſelves, had King *John* actually ſurrendered his Crown to the *Saracen* Emperor, as the Hiſtorians of thoſe Times relate he offered to do.

Nor can I be of your Opinion, that it had been much better for the Barons and Nobility of this Kingdom never to have ſtirred or reſiſted the King at all; ſince if they had not, they had never obtained the *Great Charter* of our *Liberties* from him; and if they had not as vigorouſly defended it when they had once got it, I doubt not but the People of *England* had been long before this time in the ſame Condition, as to their Liberties and Properties, as ſome of our Neighbouring Nations; all which is ſufficient, I think, to prove that *Reſiſtance*, in deſperate and unavoidable Caſes, is not attended with thoſe Miſchiefs and Inconveniences you ſuppoſe.

M. I ſhall not ſay much more in anſwer to your laſt Diſcourſe, ſince it would be to little purpoſe, but only take notice that Similes are not Arguments; and therefore your Compariſon between Thieves and honeſt Men doth not hold as to Princes and Subjects; ſince ſure there is a great deal of difference between thoſe that are to be *Obeyed as the Ordinance of God*, and thoſe who are obliged in Conſcience to be ſubject to them, and Thieves who act directly contrary to God's Will, and honeſt Men who having no obligation to them may juſtly reſiſt them: So that if that be falſe, the reſt of the Compariſon will ſignifie nothing. And as for what you ſay concerning *Magna Charta*, I think it is not much for its credit to have been extorted by Force, and afterwards defended by Rebellion; tho' I will not go about to impeach the Validity of it, ſince ſo many of our ſucceeding Kings have ſo ſolemnly and voluntarily confirmed it; only pray take notice that it is wholly derived from the Grace and Bounty of our *Monarchs*, and therefore we are not to reſiſt, tho' it may happen to be ſometimes, and in ſome particular Caſes, broken and infringed by the King, for ſome great Occaſions and Neceſſities, of which we are not competent Judges.

But to come to the reſt of thoſe evil Conſequences that may attend your Doctrine of *Reſiſtance*; I think the Benefits would be much greater to the People by ſtrictly adhering to thoſe Doctrines of *abſolute Subjection* and *Non-reſiſtance*, than by propagating yours of *Rebellion*; for if the former were conſtantly taught and inculcated as moſt beneficial for them, and if they were once really perſuaded of the Truth of it, and would both conſtantly profeſs and practiſe it, it would make all Princes much more gentle and mild to their Subjects, than otherwiſe at ſome times they are; for now they are ſtill fearful that they will take the firſt Opportunity they can to take up Arms againſt them; and upon the leaſt Grievance or Miſgovernment, to reſiſt their Authority; for then Princes not needing to keep any ſuch conſtant Guards and Standing Armies, might afford to lay much eaſier Taxes and Impoſitions upon them, for the maintenance and ſupport of the Government, than now they do; and in ſhort, would have much fewer Temptations to Tyranny and Oppreſſion, could they be once aſſured of their Subjects *abſolute Obedience* and *Subjection*: Whereas when they are under thoſe conſtant Fears and Suſpicions of *Inſurrections* and *Rebellions* againſt them upon the leaſt Occaſion; it is no wonder if they are tempted ſometimes to abuſe this Power for their own Security. And therefore we read in our Hiſtories, that *William the Conqueror* never thought himſelf ſecure from the *Engliſh* whom he had newly conquered, till ſuch time as he had turned moſt of the Nobility and Gentry out of their Offices and Eſtates, leſt they ſhould have any Power left either in his Life-time, or after his Death, to turn him or his Poſterity out of the Throne, as they did the Heir of the *Daniſh* King *Cnute*, who with his *Danes* had before conquered *England*, as King *William* did afterwards with his *Normans*: So that upon the whole Matter it ſeems to me much more to conduce to the main deſign of *Civil Government*, viz. the Happineſs and Peace of Mankind in general, that *Princes* and other *Supreme Magiſtrates* ſhould be ſuffered (I will not ſay authorized) by God, ſometimes to abuſe their Power to the general Oppreſſion and enſlaving of the People, without any *Reſiſtance* on their ſide, expecting their Deliverance wholly from him who can bring it about in his good time, and by ſuch means as ſhall ſeem moſt meet to him, than that Subjects ſhould take upon them to be both Judges and Executioners too in their own Caſe; and thereby introduce not only all the Miſchiefs of *Civil War*, and all thoſe cruel Revenges which the Wrath of an incenſed Prince may juſtly inflict upon ſuch Rebels in this Life, but alſo the Wrath of God, and thoſe

Puniſhments

Puniſhments that he hath denounced in the *Holy Scriptures* in the Life to come, againſt ſuch Rebellious Subjects as dare reſiſt the *Supreme Powers* ordained by God.

F. Before I anſwer the main part of your laſt Diſcourſe, give me leave firſt to juſtify my Simile; for tho' I grant Similes are no Arguments, yet they often ſerve to expoſe the abſurdity of ſeveral things, which either the falſe Colours of Eloquence, or the too great Authority of learned Men, might otherwiſe have hid from our Eyes: And therefore if the *Supreme Powers* have no Authority from the *revealed Will of God*, or the *Law of Nature*, nor by the *Municipal Laws* of any Country, to invade their Subjects Lives, Liberties or Eſtates, they may be ſo far compared to Thieves and Robbers when they do; nor are ſuch violent Actions of theirs to be ſubmitted to as the Ordinance of God. And I ſuppoſe you will not deny, but that a Prince or State that does thus, acts as directly contrary to God's Will as Thieves themſelves; and conſequently, all honeſt Men or Subjects having ſo far no obligation to ſuffer or obey, may juſtly reſiſt them; ſo that if this be true, all the reſt of the Compariſon *currit quatuor pedibus.*

But as for your Reflections upon *Magna Charta*, it is you your ſelf, not I, that aſſerted it to have been extorted by Force, and defended by Rebellion; for it is very well known to thoſe who are at all converſant in our *Engliſh* Hiſtories and Laws, that there was nothing granted in that *Charter* which was not the Birthright of the Clergy, Nobility and People long before the *Conqueſt*, and were comprized under the Title of King *Edward*'s Laws, and which were after confirmed by *William* I; as alſo more expreſly by the Grants of his Son *Henry* I. and King *Stephen*; as appears by their Charters ſtill to be ſeen. And therefore theſe fundamental Rights and Privileges were not extorted by Force from King *John*, as you ſuppoſe: The War commencing between him and his Barons, was not becauſe he would not grant them freſh Privileges which they had not before; but becauſe he had not kept nor obſerved the fundamental Laws of the Land, and thoſe Rights and Privileges which before belonged to the Clergy, Nobility and People, as well by the common Law of the Land, as the Grants of former Kings. And therefore if King *John*, by his apparent Breach of them, forced the Nobility and People to defend them, it was no Rebellion for ſo doing; nor was it ever declared to be ſo by any Law now extant.

But to come to the main Force of your Argument; I confeſs it were an admirable Expedient, not only againſt Rebellion, but alſo the Tyranny of Princes, to *Preach* that they ſhould not oppreſs their People, nor yet that the People ſhould rebel againſt them; but the preaching of theſe Doctrines, or getting as many as you can to believe them, will no more make Princes leave keeping Standing Armies, or laying great Taxes upon their People, than conſtant preaching againſt Robbery or Murder, will take away the neceſſary uſe of Gallows out of the Nation; ſince we know very well, that as long as the Corruption of humane Nature continues, ſo long muſt likewiſe all powerful Remedies againſt it. And therefore your Inſtance of *William the Conqueror* will ſignifie very little; for I believe, had all thoſe learned Divines (who have of late ſo much written and preached for *Paſſive Obedience* and *Non-reſiſtance*) been then alive, and had exerted the utmoſt of their Reaſon and Eloquence to prove them neceſſary; nay farther, I do not believe, tho' all the People of *England* ſhould have given it under their Hands, that they would not have reſiſted or rebelled againſt King *William*, that yet he would have truſted them the more for all that, or have kept one Soldier the leſs for it; nor have remitted one Denier of theſe great Taxes he impoſed; for he was too cunning and politick a Prince not to underſtand humane Nature, which cannot willingly endure great and intolerable Slavery and Oppreſſion without Reſiſtance, if Men are able; and therefore he very well knew, that after the forcible taking away of ſo many of the *Engliſh* Nobilities Eſtates, there was no way but Force to keep them in Obedience: And as Princes can never be ſatisfied that their Subjects have been throughly paced in theſe difficult Doctrines; ſo they can never be ſecure that they will not play the Jades, and kick and fling their Riders when they ſpur them too ſeverely, and preſs too hard upon them. And therefore, I doubt ſuch Princes whoſe Government is ſevere, will always find it neceſſary to ride this Beaſt (as you call it) the People, with ſtrong Curbs and Caviſons. But beſides all this, there is likewiſe another Infirmity in the Nature of Mankind, and of which Princes may as well be guilty as other Men, that they are more apt to oppreſs

preſs and inſult over thoſe, whoſe Principles or natural Tempers may be againſt all Reſiſtance. And for this I appeal to your Example of the *Primitive Chriſtians*, who were not one jot the better uſed by the *Roman* Emperors, tho' they expreſly diſclaimed all Reſiſtance of thoſe Emperors for Perſecution in Matters of Religion: And tho' ſome Neighbouring Princes are thought to have their Subjects in more perfect Subjection, and that either their *Religion* or *Natural Tempers* make them leſs apt to reſiſt the Violence and Oppreſſion of their *Monarchs*, than the *Engliſh*, or other Nations; yet I deſire you to enquire, whether Taxes, and all other Oppreſſions, do not reign as much under thoſe Governments, however ſenſible the Princes may be of their Subjects Loyalty and Obedience.

Therefore to conclude, I ſhall freely leave it to your Judgment, or that of any indifferent Perſon, which is moſt agreeable to the main Ends of *Civil Government*, viz. The common Good of Mankind, and the Happineſs and Safety of each particular Kingdom or Commonwealth, that the Violence and Tyranny of Princes ſhould be ſometimes reſiſted; than that the People, under the pretence of this *irreſiſtible Power*, ſhould be liable to be made Beggars and Slaves whenever any Prince or State had a mind to it. And I appeal to your own Conſcience, if the ſuppoſed Belief of the *Paſſive Obedience* of ſome of our Church, was not one of the greateſt Encouragements which the King and the Jeſuited Faction had to bring in the Popiſh Religion, under the colour of the *Diſpenſing Power*, Eccleſiaſtical Commiſſioners, and force of a Standing Army, from which unavoidable Miſchiefs nothing under God but this wonderful *Revolution* could have reſcued us: And therefore I think it becomes any honeſt Man to thank God for it, and join with his Highneſs the Prince of *Orange*, as the only means (now Miracles are ceaſed) which God hath been pleaſed to ordain by the courſe of his Providence for our Deliverance.

M. I muſt confeſs, I am ſomewhat ſtaggered with thoſe Reaſons and Arguments you have now given me againſt thoſe Principles, which as I have always, ſo muſt ſtill eſteem as ſacred, till I am convinc'd I am in an Error; and perhaps, if I were to conſult my own carnal Reaſon and natural Inclinations, I ſhould come over to your Opinion. But ſince it hath pleaſed God to lay much higher Reſtraints and ſtricter Rules of Obedience and Subjection on us, by his revealed Will in the Scripture, beyond what can be diſcovered by the Light of Nature; and that under the higheſt Penalty, *viz.* Damnation; I can ſee no reaſon why God Almighty may not grant Eternal Life upon what Conditions he pleaſes, tho' never ſo hard and uneaſy for Fleſh and Blood to perform: So that if our Saviour *Jeſus Chriſt* hath commanded us to take up his Croſs and follow him, that is, to ſuffer all ſorts of Injuries and Afflictions, nay Death it ſelf (as he himſelf did) rather than to reſiſt the *Supreme Powers* under which he lived; I cannot ſee any reaſon why he ſhould not propoſe his own Example for our Imitation: And as he hath enjoined, and expects from us greater Degrees of Chaſtity, Charity and Humility, than ever he did from the *Jews* or *Pagans*; ſo I ſee no reaſon why he may not likewiſe exact from us a greater and more perfect Obedience and Submiſſion, without any *Reſiſtance* to all Soveraign Princes and States, than ever he did either by the Law of *Moſes*, or that of Nature; not but that there are ſufficient Proofs in the *Old Teſtament*, for the *abſolute Power* of Princes againſt all *Rebellion* or *Reſiſtance* in Subjects: Tho' I confeſs this Doctrine is more plainly proved by the Example of our *Saviour*, and the Precepts of his Apoſtles in the *New Teſtament*, as alſo from the Example of the *Primitive Chriſtians* in Obedience thereunto.

F. I perceive you begin to diſtruſt your Arguments drawn from natural Reaſon and the Laws of Nature; and when you are preſſed with the abſurdity of this Doctrine of yours, you fly from God's Natural to his Revealed Will, and take Refuge under the Covert of the Holy Scripture, to impoſe an Opinion contrary to the common Senſe and natural Notions of Mankind, not corrupted with the Prejudices of Education: And therefore give me leave at preſent to tell you, that I think I ſhall be able to prove, that the *Paſſive Obedience* (as you call it) of the *Primitive Chriſtians*, and their Sufferings for the Name of *Chriſt*, will not at all contradict that natural Right, which I ſuppoſe all Freemen to have, as well under *Civil Government* as in the *State of Nature*, for the defence of their Lives, Liberties and Properties, unleſs where the common Good and Peace of the whole or major Part of the People require the contrary: And therefore the ſame Reaſons

which oblige particular Persons to be quiet, and not to disturb the publick Peace of the whole Society, for their own private Safety and Advantage; unless when the whole Body of the People, or the major Part of them is thus violently assaulted in their Lives, Liberties and Estates; the same Considerations of the publick Good of their Country (whereof every Man is a Member) doth then as strongly persuade, I may say enjoyn them to take up Arms and defend themselves for the Preservation of the whole People or Community, whose natural and civil Rights being now attack'd, can no otherwise be restored to the same State they were in before, but by that last Remedy that can be used in this Case, *viz. Vim vi repellere.*

M. I must confess that of all *Commonwealth Hypotheses*, yours is most reasonable, being coherent with it self, and also most likely to be swallowed by the People; because it flatters our corrupt Natures, to which this Christian Doctrine of *Passive Obedience* is so directly opposite; as also, because it gives them a full Liberty, I mean, not only the Representative Body, but the major part of them, to reassume that Power which you pretend they never parted with; and so consequently all necessity of suffering (except when they please to think they have justly deserved it) is taken away; and the Sufferings of the *Primitive Christians* will be rendered only a tame Madness, and that St. *Paul* was very much overseen to enjoyn this Subjection to the *Romans*, under the Government of one of the most cruel Tyrants that ever sway'd that Scepter: But we have not so learned *Christ*; and therefore I am firmly persuaded, that we ought to be strictly Obedient, without any Resistance to those Civil Governors that God hath been pleased to set over us, let them abuse their Power never so Tyrannically.

F. I am beholden to you for your plain dealing with me in this Matter, and pleased to find that you have an Inclination to my Principles, were it not for some Texts of Scripture and Citations out of the Fathers and Church History which give you a Prejudice against them, which I hope when they come to be closely examined will signifie no more than the former.

But for the dispatching this important Controversy, I pray give me leave to propose this easy Method; first, that you would be pleased to lay down your Authorities out of Scripture in order; and afterwards, to shew me that the ancient Fathers and Primitive Church always understood those Texts in the same Sense that you do, *viz.* That no Resistance of the *Supreme Powers* is lawful to be exercised in any Case whatsoever.

M. I approve of your Proposal, and therefore I will first begin with those Proofs which are expresly against all Rebellion or Resistance in the *Old Testament.* The
S. C. R. ch. 1. p. 7. first Governor that God set over the Children of *Israel*, when he brought them out of the Land of *Egypt*, was *Moses*; and I think I need not prove how sacred and irresistible his Authority was: This is sufficiently evident in the Rebellion of
Numb. 16. *Korah*, *Dathan* and *Abiram*, against *Moses* and *Aaron*, when God caused *the Earth to open her Mouth and swallow them up.* And lest this should be thought an extraordinary Case, *Moses* and *Aaron* being extraordinary Persons immediately appointed by God, and governed by his immediate Direction; the Apostle St. *Jude* alledges
Jude v. 11. this Example against those in his Days, who were Turbulent and Factious, *who despised Dominions, and spake evil of Dignities, that they should perish in the gainsaying of Core*; which he could not have done, had not this Example extended to all ordinary as well as extraordinary Cases; had it not been a lasting Testimony of God's Displeasure against all those who oppose themselves against *Soveraign Powers.* But *Moses* was not always to rule over them, and therefore God expresly provides for a Succession of *Soveraign Powers*, to which they must all submit: The ordinary *Soveraign Power* of the *Jewish* Nation, after *Moses*'s Death, was devolv'd either on the *High Priest*, or those extraordinary Persons whom God was pleased to raise up, such as *Joshua* and the several *Judges*; till in *Samuel*'s Days it settled in their
Ibid. p. 8. Kings. For as for the *Jewish Sanhedrim*, whose Power is so much extolled by the *Jewish* Writers (who are all of a late Date, many Years since the Destruction of *Jerusalem*, and therefore no competent Witnesses of what was done so many Ages before) it does not appear from any Testimony of Scripture, that there was such a Court of Judicature, till after their Return from the *Babylonish* Captivity.

But yet God took care to secure the Peace and good Government of the Nation, by appointing such a Power as should receive the last Appeals, and whose Sentence in all Controversies should be final and uncontroulable, as you may see in

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Deuteronomy, chap. 17. There were indeed inferior Magistrates and Judges appointed in their several Tribes and Cities, which *Moses* did by the Advice of *Jethro* his Father-in-law, and by the Approbation of God. But as the *Supreme Power* was still reserved in the Hands of *Moses* while he liv'd; so it is here secured to the *High Priest* or *Judges* after his Death; for it is expresly appointed, that if those *inferior Judges* could not determine the Controversy, *they should come unto the Priests, the Levites*, that is, the Priests of the Tribe of *Levi* (who by the 12th Verse appear only to be the High-Priest) *and to the Judge that shall be in those Days*; that is, if it shall be at such a time when there is an extraordinary Judge raised by God (for there were not always such Judges in *Israel*, as is evident to any one who reads the Book of *Judges*) they should enquire of them, and *they shall shew the Sentence of Judgment; and thou shalt do according to the Sentence, which they of that Place* (which the Lord shall chuse) *shall shew thee, and thou shalt observe to do according to all they shall inform thee*: And what the Authority of the *Chief-Priest*, or of the *Judge*, when there was one, was in those Days, appears from *ver.* 12. *And the Man that will do presumptuously, and will not hearken to the Priest (that standeth to Minister there before the Lord thy God) or unto the Judge, even that Man shall die, and thou shalt put away the Evil from* Israel: This is as absolute an Authority as the most absolute Monarch in the World can challenge, that Disobedience to their last and final Determination, whatever the Cause be, shall be punish'd with Death: And what place can there be for Resistance in such a Constitution of Government as this? It is said indeed, *ver.* 11 *And according to the Sentence of the Law which they shall teach thee, and according to the Judgment that they shall tell thee, thou shalt do.* And hence some conclude that they were not bound to abide by their Sentence, nor were punishable if they did not, but only in such Cases when they *gave Sentence according to the Law of God*: But these Men do not consider that the Matter in Controversy is supposed to be doubtful, and such as could not be determined by the inferior Courts, and therefore is submitted to the Decision of the *Supreme Judge*; and as he determin'd, so they must do; and no Man, under the Penalty of Death, must presume to do otherwise; which takes away all liberty of Judging from private Persons, tho' this *Supreme Judge* might possibly mistake in his Judgment, as all humane Judicatures are liable to Mistakes; but it seems God Almighty thought it necessary that there should be some final Judgment, from whence there should be no Appeal, notwithstanding the possibility of a Mistake in it.

Deut. 17. *v.* 8, 9, 10, 11, 12. *Exod.* 18. *S. C. R. p.* 10. *Ibid p.* 11.

So likewise when God had appointed *Joshua* to succeed *Moses*, and had conferr'd upon him all that Power that *Moses* had before; and that he came to give his Orders to the two Tribes and an half before their Passage over *Jordan*, you'll find that they not only promis'd him perfect Obedience, as they had before pay'd to *Moses*; but farther also assur'd him, *That whosoever he be that doth rebel against thy Commandment, and will not hearken unto thy Words in all that thou commandest him, he shall be put to Death*: So that there was a *Supreme* and *Soveraign*, that is, an *unaccountable* and *irresistible Power* in the *Jewish* Nation appointed by God himself; for indeed it is not possible that the publick Peace and Security of any Nation should be preserved without it.

Joshua 1. 18.

F. You have, Sir, methinks taken a great deal of Pains to prove that which I do not at all deny, but rather joyn with you to assert, that Stubbornness and Disobedience to God's Commands is a very great Sin, and the *Rebellion thereunto is likened to the Sin of Witchcraft*; as *Samuel* shews to no less a Man than King *Saul* himself, when he had rebelled against (that is, disobeyed) God in not destroying the King of the *Amalekites*; and therefore it is no wonder, that in a Government where God himself was the Head, and had appointed *Moses* and *Aaron* as his Lieutenants or Substitutes under him, the one in Civil, and the other in Ecclesiastical Matters; that God should punish their Murmuring and Rebellion against them as done to himself; not that I deny but that St. *Jude* does likewise denounce this Judgment of perishing *in the gainsaying of Core*, against those wicked Hereticks the *Gnosticks*, who thought themselves set free from all Civil Subjection, and therefore *despised Dominions, and spake evil of Dignities*; that is, not the Men invested with them, but Civil Magistracy it self; which they look'd upon as inconsistent with their Christian Liberty.

1 *Sam.* 15. 23.

But yet for all this, and that I grant God denounced no less than the Sentence of Death against any Man that refused to hearken to the Priest, or unto the Judge, in those Matters that should be brought before them by way of Appeal; and also

that whoever would not obey *Joshua*, but should rebel against his Commandments, should be put to Death; yet can I not think that there was any *Irresistible Power*, plac'd by God, in the Persons of *Moses*, *Joshua*, or the *Judges*, or that it was not possible for the publick Peace or Security of the Nation to be preserv'd without that: But indeed all these Persons above nam'd, being to be obeyed as God's Substitutes or Lieutenants, as he was King of the Children of *Israel*, so likewise their Commands or Dictates were only so far to be observ'd as they perform'd this Commission; and if they had swerved from it, I doubt not but they might not only have been disobeyed, but also resisted by them: And therefore pray tell me, suppose this *Rebellion of Core* had happened because *Moses*, making himself a distinct Party amongst the mix'd multitude of Strangers that came up with them out of the Land of *Egypt*, and others of his own Tribe, or whom he could
Exod. 12. 38. bring over to his Faction, under colour of this *Soveraign Power* (which God had given him) had, instead of leading and governing the People committed to his Charge, taken upon him to have rob'd them of all those Goods and Riches which they had brought with them out of the Land of *Egypt*, and had sold the People or their Children for Slaves to the Neighbouring Nations, to enrich himself and his Family; do you believe that the Children of *Israel* had been obliged to have obeyed such a Leader, and not have resisted him and his Party if there had been occasion? So likewise, if *Joshua*, instead of leading God's People into the *Holy Land*, had taken upon him, notwithstanding God's Commands to the contrary, to have carried them again into *Egypt*; can you think they had been bound to obey him, and might not lawfully have resisted him, if he had gone about, by the assistance of his Accomplices, to force them to it? For I doubt not but if these Substitutes had acted contrary to that Commission God had given them, they were no longer to be look'd upon as God's Vicegerents, no more than the now Lieutenant of *Ireland*, the Lord *Tyrconnel*, ought to be obeyed, and not resisted, if he should go about, by vertue of that Commission which the King hath conferred upon him, and by the help of the *Rebellious Irish* in that Kingdom, to murder all the *Protestants* and set up for himself. So likewise all the strict Obedience and Submission that was to be paid to the Sentence of the High-Priest or Judge, was only in relation to God himself, whose Sentence it was, and who always revealed his Will, either to the Judge by particular Inspiration, or to the High-Priest by the *Ephod* or *Urim* and *Thummim*; and therefore we read in *Judges*, that *Deborah*, tho' a Woman, yet being a Prophetess inspir'd by God, judged *Israel*.

Now suppose that this Judge or High-Priest, neglecting (like *Balaam*) the *divine Inspiration*, and the Dictates of that sacred *Oracle*, had, instead of a righteous Judgment, given a Sentence in a Cause that had come before them, whereby Idolatry, or Breach of some great Point of the Law of *Moses*, had been established; do you think that God ever intended that this Sentence should have been obeyed under pain of Death?

And therefore you may find in the second Book of *Maccabees*, that when *Jason* and *Menelaus* had by Bribery obtained the High-Priesthood, tho' it was then the chief Authority (under the Kings of *Syria*) both in Ecclesiastical and Civil Matters; yet when they went about to undermine the *Jewish* Religion, and seduce the
2 *Macc.* 4. v. 25. People to Idolatry, they were not at all look'd upon as High-Priests, *but are there called ungodly Wretches, doing nothing worthy of the High-Priesthood, but having the Fury of a Cruel Tyrant and of a Savage Beast*; and were so far from being at all obeyed by the *Jews*, that *Jason*, *Menelaus* and *Alcimus*, who were successively High-Priests in the room of *Onias*, were, as far as the People were able, opposed by them; till at
1 *Macc.* 7. 23, 24, 25. last *Judas Maccabeus* taking Arms against *Alcimus* the *Simoniacal* High-Priest, restored by force the true Worship of God: So that you see that the Obedience was not pay'd to the Person of the High-Priests, only as such, by vertue of this Precept in *Deuteronomy*, but only as far as they observed the Law of *Moses*, and gave Sentence or Judgment in all Matters according to it. And therefore it is no good Argument of yours, because the People were bound to obey their Sentence in doubtful Cases, therefore they had an absolute irresistible Power to give what Judgments they pleased, and that the People were obliged to observe them under pain of Death, and being guilty of Rebellion; for that had been to have given the High-Priests and Judges a Power to have alter'd the true Worship of God whenever they pleased, and to have introduced Idolatry in the room of it. So that I think none of these Places will prove any more, but that God and his Lieutenants

were

were to be obeyed; and that it was Rebellion to reſiſt them under the *Jewiſh* Government, as long as they did not force the People to *Idolatry*, which I do not at all deny.

M. Tho' you labour to wave theſe Examples and Precepts which I have now cited, and will not take them for convincing; yet let me tell you, your Exceptions againſt them only tend to prove that Idolatrous Kings might be reſiſted under the *Jewiſh* Law, which is directly contrary to the ſacred Hiſtory; as I ſhall prove very clearly to you by theſe following Teſtimonies I ſhall make uſe of; yet I think it is much more plain, that when the *Jews* would have a King, their Kings were to be inveſted with a Supreme and Irreſiſtible Power; for when they deſired a King of *Samuel*, they did not deſire a meer nominal and titular King, *but a King to Judge them, and go in and out before them, and Fight their Battels*, that is, a King who had the Supreme and Soveraign Authority, a King who ſhould have all that Power of Government (excepting the peculiar Acts of the Prieſtly Office) which either their High-Prieſt or their Judge had before. *S. R. & P.* p. 11. 1 *Sam.* 8. 6, 19, 20.

And therefore when *Samuel* tells them what ſhall be the Manner of their King, tho' what he ſays doth neceſſarily ſuppoſe the Tranſlation of the Soveraign and Irreſiſtible Power to the Perſon of their King, yet it doth not ſuppoſe that their King had any new Power given him, more than what was exerciſed formerly by the Prieſt and Judges; he doth not deter them from chuſing a King, becauſe a King ſhould have greater Power, and be more uncontroulable and irreſiſtible than their other Rulers were; for *Samuel* himſelf had before as Soveraign and Irreſiſtible a Power as any King; being the Supreme Judge of *Iſrael*, whoſe Sentence no Man could diſobey or contradict, but he incurred the Penalty of Death, according to the *Moſaical* Law: But the Reaſon why he diſſuades them from chuſing a King, was becauſe the external Pomp and Magnificence of Kings was like to be very chargeable and oppreſſive to them; *He will take your Sons and appoint them for himſelf, for his Chariots, and to be his Horſe-men, and ſome ſhall run before his Chariots. And he will appoint him Captains over Thouſands, and Captains over Fifties, and will ſet them to ear his Ground, and to reap his Harveſt.* And thus in ſeveral Particulars he ſhews them what Burdens and Exactions they will bring upon themſelves by ſetting up a King, which they were then free from; and if any Prince ſhould be exceſſive in ſuch Exactions, yet they had no way to help themſelves; they muſt not reſiſt nor rebel againſt him; nor expect that, whatever Inconvenience they might find in Kingly Government, God would relieve and deliver them from it when once they had choſen a King: *Ye ſhall cry out in that Day, becauſe of your King that you have choſen you; and the Lord will not hear you in that Day*; that is, God will not alter the Government for you again, how much ſoever you may complain of it. 1 *Sam.* 8. 6, 19, 20. *Ver.* 11. *S. C. R. P.* p. 12, 13. *Ver.* 18.

This, I ſay, is a plain Proof, that their Kings were to be inveſted with that Soveraign Power which muſt not be reſiſted, tho' they oppreſs their Subjects to maintain their own State, and the Grandeur and Magnificence of their Kingdoms. But I cannot think that theſe Words contain the Original Grant and Charter of Regal Power, but only the Tranſlation that was formerly in their High-Prieſts or Judges to Kings: Kings had no more Power than their other Governors had, for there can be no Power greater than that which is irreſiſtible: But this Power in the Hands of Kings was likely to be more burdenſome and oppreſſive to them, than it was in the Hands of their Prieſts and Judges, by reaſon of their different way of Living; which is the only Argument *Samuel* makes uſe of to diſſuade them from transferring the Supreme and Soveraign Power to a King; and therefore I rather chuſe to tranſlate *Miſhpat*, as our Tranſlators do, by the *Manner of the King*, than with ſome learned Men, *by the Right of the King*, thereby underſtanding the Original Charter of Kingly Power; for it is not the Regal Power which *Samuel* here blames, which was much like that which he himſelf had exerciſed while he was Supreme Judge of *Iſrael*, but their Pompous way of living, which would prove very oppreſſive and burdenſome to them, and be apt to make them complain, who had not been uſed to ſuch Exactions.

F. You have, I muſt confeſs, made a much fairer Expoſition of this out of *Samuel*, than divers of our high-flown Divines, who would render this *Miſhpat* as it is in the *Hebrew*, *i. e.* the Manner of the King, by Right of the King; whereby they would entitle all Kings whatſoever to an abſolute Right to all their Subjects Eſtates, whenever they would take them away; not taking notice that this Word

Miſhpat

Mishpat is sometimes used not only in a good, but a bad Sense, not for *Right* or *Power*, but for an *evil Custom* or *Abuse*; and therefore you may find, in the second Chapter of this Book of *Samuel*, that speaking of the Sons of *Eli*, *who were Sons of* Belial, *they knew not the Lord, that the Priests* (viz. their) Custom *with the People was, that when any Man offered Sacrifice, the Priests Servant came, whilst the Flesh was in seething, with a Flesh-hook of three Teeth in his Hand; and he strook it into the Pan, or Kettle, or Caldron, or Pot; all that the Flesh-hook brought up, the Priest took for himself: so they did in* Shiloh, *unto all the* Israelites *that came thither.* Ver. 12, 13, 14. Where I desire you to observe, that that which is render'd in our Translation the *Priests Custom*, is in the *Hebrew Mishpat*, which they render *Right*; so that if this Word would do it, these wicked Priests had also a Right to take away as much of every Man's Sacrifice as they pleased for themselves; nay, to take it before God himself was served, and the Fat burnt (according to the Rites of Sacrificing.) And by the same Rule, Kings also by this Word *Mishpat* should have a Right to take what they pleas'd of the Subjects Estates.

I do likewise so far agree with you, that *Samuel* does not here describe a *Tyrant*, but one of those absolute Eastern Princes, who made use of a great part of their Subjects Estates (as they do at this day) to maintain their Standing Armies, and Royal Pomp and Magnificence. So that I grant, in short, *Samuel* meant no more when he thus spake to them, but, Since you will have a *King*, he must be maintained like a King, and very great *Taxes* will be laid upon you for this end; of which Burden if you should hereafter be weary, or would cast it off again, you shall by no means do it: For since this King shall obtain the Crown, not only by God's Appointment, but by your own Choice or Election, it shall not be in your power again to depose him, since it is your own Act: And therefore *Samuel* tells them, *That when they should cry unto the Lord in that Day, because of the King which they had chosen, the Lord would not hear them.* And as long as this King kept himself within these bounds, I grant he was not to be resisted.

Yet nevertheless, this Place you have now cited, as it is very far from patronizing Tyranny, or all the Abuses of Regal Power; so neither do I think it was *Samuel*'s meaning to make the Kings of *Israel* so *absolute* or *irresistible*, as that upon no account whatsoever the People might disobey or resist them, let them use this Power never so wickedly, nay, contrary to God's express Commands, and the Ends of all Civil Government: And therefore pray tell me; suppose, instead of these necessary Burdens, which they should be subject to when they had a King, *Samuel* had spoke thus to them: This King (whom you desire) shall prove an Idolater, and as cruel a Tyrant as *Pharaoh*, or any of the Kings of the *Philistines*, *Canaanites*, or any other Nations who so long tyrannized over you; and shall take away all your Estates, and Lives too, at his good pleasure, without any Crime, or legal Trial; and in short, will not only himself use you for Slaves, but sell you and your Children for Bondmen to the *Egyptians*, and other Nations, and shall lay such grievous Tributes and Burthens upon you, that you shall be scarce able to live under them.

Now can any Man think, if the *Israelites* had been really persuaded, that their King must have such an absolute and arbitrary Power, as a necessary and inseparable Prerogative of his Crown, they would ever have been so fond of such a Government, as to have cried out with one Consent; *Nay, but we will have a King over us, that we may be like other Nations:* But, sure, not to tyrannize over and enslave us, but *that he may judge us, and go out before us, and fight our Battels.* Ver. 20. Or do you think, if they had had such a King as this, they would ever have long endured him? For that the Children of *Israel* did not conceive that their Kings had such an absolute and arbitrary Power over them, as to oppress them with Taxes, and to make their Yoke more grievous to them than they were able to bear, or to tyrannize over them at his good pleasure, appears plainly by the Story in the first of *Kings*, concerning the Children of *Israel*'s assembling together at *Shechem*, to make *Rehoboam* King: Chap. 12. And you'll find the Preliminary Conditions of his Government were these: *All the Congregation of* Israel *came, and spake unto* Rehoboam, *saying, Thy Father made our Yoke grievous: Now therefore make thou the grievous Service of thy Father, and his heavy Yoke, which he put upon us, lighter, and we will serve thee.* Ver. 3, 4. But see the Answer that *Rehoboam* made them, according to the Wisdom of his young Counsellors: *My little Finger shall be thicker than my Father's Loins; and whereas my Father did lade you with a heavy Yoke, I will add to your Yoke: My Father has chastised* Ver. 10, 11.

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you with Whips, but I will chaſtiſe you with Scorpions. And mark what follows upon this Anſwer: *So when all* Iſrael *ſaw, that the King hearkened not unto them, the People* Ver. 16. *anſwered the King, ſaying, What Portion have we in* David? *neither have we Inheritance in the Son of* Jeſſe. *To your Tents, O* Iſrael: *Now ſee to thine own Houſe,* David. *So* Iſrael *departed unto their Tents.* And it is farther ſaid, *So* Iſrael *rebelled* Ver. 19. *againſt the Houſe of* David *unto this day.* Nor is this Action at all blamed or diſapproved by the Scripture, or rebuked by any Prophet at that time; for tho' the Word is here tranſlated, *they rebelled*; yet in the *Hebrew* it ſignifies no more than *fell away from* or *revolted:* And it is ſaid before, that the King hearkened not to the People: *For the Cauſe* (which may be alſo tranſlated REVOLUTION) *was* 1 Kings 12. *from the Lord, that he might perform his Saying, which he ſpake by* Ahijah *the* Shilonite 15. *unto* Jeroboam, when, in the Chapter before, the Prophet promis'd him the Kingdom of the Ten Tribes, and that God would rend them out of the hand of *Solomon* (*i. e.* his Poſterity) and give them unto him, who thereupon had a *Right* to them: And that, upon his being *made King by the People*, he had alſo a Right to their Obedience, is as evident; ſince to continue in a State of Rebellion towards one King, and an Obligation to obey another, are abſolutely inconſiſtent in the ſame Subject, as I have already proved at our ſecond Conference. And therefore I cannot but here take notice of that rational Account which the Earl of *Clarendon*, in his Survey of the *Leviathan*, which you before quoted, gives of *this Revolution*. "Nor did the People (*viz. of Iſrael*) conceive themſelves liable to thoſe Impoſi-"tions; as appears by the Application they made to *Rehoboam* upon the Death "of *Solomon*, that he would abate ſome of that Rigour his Father had exerciſed "towards them, the rough Rejection of which, contrary to the Advice of his "wiſeſt Counſellors, coſt him the greateſt part of his Dominions: And when "*Rehoboam* would by Arms have reduced them to Obedience, God would not "ſuffer him, becauſe he had been in the fault himſelf."

M. After this extravagant way of arguing, whenever the Subjects of any Nation ſhall think themſelves too much oppreſs'd with Taxes, or other Grievances, above what they are able to bear, if they are not eas'd by the King or Supreme Magiſtrates upon the firſt Petition, they may preſently caſt off that Power they were under, and ſet up another, that would govern them upon cheaper Terms: For if the People of *Iſrael* had this Right, why may not all other Nations claim the ſame? And this Doctrine, however comfortable it might be to the People, I am ſure it would be very miſchievous to all the Monarchies and Commonwealths in the World; and it is likely that the Subjects of the *French* King, nay *States of Holland*, and other Princes, would quickly take the firſt Opportunity, either to make their Princes and States to tax them no more than they pleaſe themſelves, or elſe they may preſently cry with the *Iſraelites*, *To thy Tents, O* Iſrael. Nor can I ſee how the King and Parliament in *England* would be in a much better Condition in relation to the People they repreſent, ſhould they impoſe greater Taxes than they thought they could afford to pay. And this Privilege you give the *Iſraelites* ſeems to be clean contrary to what you laid down at our laſt Conference, wherein you excepted great Taxes and Tributes to Princes or States, as no juſt Cauſe of Reſiſtance, or taking up Arms: And therefore I think I may very well maintain the old Doctrine about this matter, and that tho' God did rend the Kingdom from *Rehoboam*, and beſtow it upon the Son of *Nebat*, whom alſo when the People had made King they were obliged to obey, becauſe it was God's Will it ſhould be ſo, who gives and takes away Kingdoms from whomſoever he pleaſes; yet doth not this at all juſtify the Rebellion of the *Iſraelites*, or *Jeroboam*'s Uſurpation of his Maſter's Kingdom; ſince God oftentimes makes uſe of this Rebellion of the People to execute his Judgment upon a ſinful Prince and Nation: And therefore it is very remarkable, that after this Rebellion of the *Iſraelites* from the Houſe of *David* they never proſpered; but, by their Kings ſtill falling one after another into the ſame Idolatry, God at laſt was ſo highly provoked againſt them, that he ſuffered them to be carried away Captives into a ſtrange Land, near two hundred Years before the Tribes of *Judah* and *Benjamin* underwent the ſame Fate for the like Crime.

F. I hope you will not be in a paſſion, becauſe I have brought this Inſtance of the *Iſraelites* Defection from *Rehoboam*, as an Example of the Right that Subjects may have, in thoſe Caſes I have put, to reſiſt or caſt off thoſe Supreme Powers that God had once ſet over them: For I do confeſs, Divines and other Authors

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are much divided about this Action of the *Iſraelites*, ſome maintaining it to be well done, and in purſuance to God's Will, and others holding it to be downright Rebellion. And therefore I ſhall not poſitively aſſert either the one or the other, much leſs that Subjects may rebel whenſoever they conceive themſelves overtax'd: But thus much I think I may ſafely affirm, that if the *Iſraelites* had no Right upon any ſcore whatſoever to reſiſt, I cannot ſee why *Rehoboam* might not have made them, if he had pleas'd, as errant Slaves as ever their Anceſtors were in *Egypt*; and what he elſe meant by ſaying, *inſtead of Whips to chaſtiſe them with Scorpions* (which were a ſort of thorny Rods, with which the *Jews* corrected their Slaves and Malefactors) I cannot underſtand. And as for Taxes, tho' I confeſs there is no ſetting any exact Meaſure to them, ſince no Man can poſitively define what the Exigences of a State may require; and I think no good Subjects ought to deny to contribute as much as ever they are able to afford, to maintain the Government they live under, as long as they receive the Protection of it: So, on the other ſide, ſhould the Supreme Power of any Nation (where the People are not meer Slaves) under the pretence of laying neceſſary Taxes for the Maintenance or Preſervation of the Government, be conſtantly exacting from the People more than they are able to pay: As if, for example, they ſhould out of every Man's Eſtate take *Nineteen Parts*, and leave but the *Twentieth* for the Subſiſtance of thoſe that own it; I do not think, in that caſe, the People were obliged in conſcience to pay it, and might in ſuch caſe lawfully reſiſt thoſe Officers that ſhould come to levy it by force.

M. I could have argued farther againſt what you have now ſaid, concerning this Right of the People of *Reſiſting*, in caſe of extravagant or intolerable Taxes; but ſince it is not to the Subject in hand, I ſhall refer it to another time: And therefore, to return where I left off, I ſhall in the next place ſhew you, how ſacred and irreſiſtible the Perſons and Authority of Kings were under the *Jewiſh* Government; and there cannot be a plainer Example of this than in the Caſe of *David*. He was himſelf anointed to be King after *Saul*'s Death; but in the mean time he was grievouſly perſecuted by *Saul*, who purſued him from one Place to another, with a deſign to take away his Life. How now doth *David* behave himſelf in this Extremity? What courſe doth he take to ſecure himſelf from *Saul?* Why he takes the only courſe that is left to a Subject; he flies for it, and hides himſelf from *Saul* in the Mountains and Caves of the Wilderneſs, and when he found he was diſcovered in one place, he removes to another: He kept Spies upon *Saul* to obſerve his Motions, not that he might meet him to give him battle, or to take him at an advantage, but that he might keep out of his way, and not fall unawares into his hands.

S. C. R. 28, 29.

Well, but this was no thanks to *David*, you'll ſay, becauſe he could not do otherwiſe: He was too weak for *Saul*, and not able to ſtand againſt him; and therefore had no other Remedy but Flight: But yet we muſt conſider, that *David* was a Man of War, he ſlew *Goliah*, and fought the Battles of *Iſrael* with great Succeſs: He was an admired and beloved Captain, which made *Saul* ſo jealous of him; the Eyes of *Iſrael* were upon him for their next King, and how eaſily might he have raiſed a potent and formidable Rebellion againſt *Saul?* But he was ſo far from this, that he invites no Man to his aſſiſtance; and when ſome came uninvited, he made no uſe of them in an offenſive or defenſive War againſt *Saul:* Nay, when God delivered *Saul* twice into *David*'s hands, that he could as eaſily have killed him as have *cut off the Skirts of his Garment at* Engedi, or as have taken *that Spear away which ſtuck on the Ground at his Bolſter*, as he did in the Hill of *Hachilah*; yet he would neither touch *Saul* himſelf, nor ſuffer any of the People that were with him to do it, tho' they were very importunate with him to let them kill *Saul*; nay, tho' they urged him with an Argument from Providence, that it was an Evidence, that it was the Will of God that he ſhould kill him, *becauſe God had now delivered his Enemy into his hands*, according to the Promiſe he had made to *David*. We know what uſe ſome Men have made of this Argument of Providence to juſtify all the Villanies they had a mind to act; but *David*, it ſeems, did not think, that an Opportunity of doing evil gave him a Licence and Authority to do it. Opportunity, we ſay, makes a *Thief*, and it makes a Rebel and a Murderer too. No Man can do any Wickedneſs which he has no Opportunity of doing; and if the Providence of God, which puts ſuch Opportunities into Mens hands, might juſtify the Wickedneſs they commit, no Man can be charge-

1 Sam. 24. —— 26. —— 24. 4. —— 26. 8. *Ib.* p. 30.

able

able with any Guilt, whatever he does; and certainly Opportunity will as soon justify any other Sin, as Rebellion, and the Murder of Princes. We are to learn our Duty from the *Law* of God, not from his *Providence*; at least this must be a settled Principle, that the *Providence* of God will never justify any Action, which his Law forbids.

And therefore, notwithstanding this Opportunity which God has put into his hands to destroy his Enemy, and to take the Crown for his Reward, *David* considers his Duty, remembers, that tho' *Saul* were his Enemy, and that very unjustly, yet he was still the Lord's Anointed. *The Lord forbid*, says he, *that I should do this unto my Master, the Lord's Anointed, to stretch forth my Hand against him*, seeing he is the *Lord's Anointed*. Nay, he was so far from *taking away his Life*, that his Heart smote him for *cutting off the Skirt of his Garment*. And we ought to observe the Reason *David* gives, why he durst not hurt *Saul*, because he was the *Lord's Anointed*; which is the very Reason the Apostle gives in the *Romans*, because *the Powers that are, are ordained of God, and he that resisteth the Power, resisteth the Ordinance of God*. For to be anointed of God signifies no more than that he was made King or ordained by God. For this external Unction was only a visible Sign of God's Designation of them to such an Office; and it is certain they were as much *God's Anointed* without this visible Unction as with it. *Cyrus* is called *God's Anointed*, tho' he never was anointed by any Prophet, but only designed for his Kingdom by Prophecy; and we never read in Scripture, that any Kings had this external Unction, who succeeded in the Kingdom by *Right of Inheritance*, unless the Title and Succession were doubtful; and yet they were the *Lord's Anointed* too, that is, were plac'd in the Throne by him. So that this is an eternal Reason against *resisting* Sovereign Princes, that they are set up by God, and invested with his Authority; and therefore their Persons and their Authority are sacred.

Rom. 13. 1, 2.

Isa. 45. 1.

F. I am so far from differing with you in what you have said concerning this Example of *David* towards *Saul*, tho' his Enemy, that I think it ought to be a Pattern to every single private Man, tho' never so great, in a Kingdom or Commonwealth, how to comport himself towards the *Supreme Powers*, if he himself alone be unjustly persecuted by them either in his Life or Estate, that is, to fly if he can, tho' with the Loss of all his Estate, rather than resist. Tho' there are some Circumstances in this Story of *David*, that make it evident that he did not think a defensive War against those Cut-throats that *Saul* might send to kill him unlawful; and so much Dr. *Fearn* himself, in his first Discourse call'd *Resolving of Conscience*, &c. against *Resistance of the Higher Powers*, acknowledges: For *David*, when he fled from *Saul*, made himself Captain of four hundred Men, which Number soon encreased to six hundred, and still every day grew more by Additions. Now why should he entertain those Men, but to defend himself against the Forces of *Saul*? that is, to make a defensive War, whenever he was assaulted by them.

Sect. 2.

1 Sam. 22. 2. —— 23. 13. 1 Chron. 12. 1.

M. I think I can give you a sufficient Answer to this, and therefore you must observe, that *David* invited none of these Men into him; but they came as Volunteers after a beloved Captain and General: Which shews how formidable he could easily have made himself, when such Numbers resorted to him of their own accord.

S. C. R. p. 32.

When he had them, he never used them for any hostile Acts against *Saul*, or any of his Forces: He never stood his ground when he heard *Saul* was coming, but always fled, and his Men with him; Men who never were us'd to fly, and were very ready to have served him against *Saul* himself, would he have permitted them. And I suppose you will not call it a *defensive War*, to fly before an Enemy, and to hide themselves in Caves and Mountains; and yet this was the only *defensive War* which *David* made with all his Men about him: Nay, all that he would make, and all that he could make, according to his professed Principles, that it *was not lawful to stretch out his Hand against the Lord's Anointed*. And when these Men are pursued, as *David* was, by an enraged and jealous Prince, I will not charge them of *Rebellion*, tho' they fly before him by thousands in a Company.

Yet there was sufficient Reason why *David* should entertain these Men, who voluntarily resorted to him, tho' he never intended to use them against *Saul*: For some of them served for *Spies*, to watch *Saul*'s Motions, that he might not be surprized by him, but have timely notice to make his Escape. And the very Presence of such a Number of Men about him, without any hostile Act, preserved

him from being ſeiz'd on by ſome officious Perſons, who otherwiſe might have delivered him into *Saul*'s hands. And he being anointed by *Samuel* to be King after *Saul*'s Death, this was the firſt Step to his Kingdom, to have ſuch a Retinue of valiant Men about him; which made his Advancement to the Throne more eaſy, and diſcouraged any Oppoſitions, which might otherwiſe have been made againſt him; as we ſee it proved in the event, and have reaſon to believe that it was thus ordered by God for that very end. It is certain that *Gad* the Prophet, and *Abiathar* the Prieſt, who was the only Man who eſcaped the Fury of *Saul*, when he deſtroyed the Prieſts of the Lord, were in *David*'s Retinue; and that *David* enterprized nothing, without firſt asking Counſel of God: But he who had anointed him to be King now draws Forces after him, which after *Saul*'s Death ſhould facilitate his Advancement to the Kingdom.

F. I cannot think your Anſwer to this Objection ſatisfactory; for firſt, it is evi-
1 Sam. 22. 1. dent, that when *David* was at the Cave of *Adullam*, his Brethren and all his Father's Houſe, as ſoon as they heard it, went down thither to him: And tho' it be not expreſly ſaid, that he ſent for any to come to his Aſſiſtance, yet it is plain he refuſed none that came; and to what purpoſe ſhould he make uſe of ſo many as 400 or 600 Men, unleſs it were to defend himſelf againſt thoſe Men that *Saul* might ſend againſt him, ſince half a ſcore or twenty Perſons had been enough to have ſerved for Spies? And if he had thought himſelf obliged only to run away, three or four Servants had been enough in conſcience to have waited on him in any neighbouring Country: But that *David* thought it no Sin to defend himſelf from the Violence of thoſe whom *Saul* ſhould ſend to kill him, is plain from what
1 Sam. 22. 23. he ſays to *Abiathar*, upon his Flight unto him after the Death of his Father: *Abide thou with me; fear not: for he that ſeeketh my Life, ſeeketh thy Life, but with me thou ſhalt be in ſafeguard.* And if *David* had not meant by theſe Words to have defended *Abiathar*'s as well as his own Life, if aſſaulted, and without a poſſibility of eſcaping, it had been very cold comfort for *David* to have only aſſur'd him, that he ſhould be in ſafeguard with him till the firſt Aſſault that ſhould be made upon them, but that then he ſhould ſhift for himſelf; for as for his own part, he would rather permit his Throat to be cut by the King's Officers or Soldiers than reſiſt them.

And therefore, tho' I own that it was not lawful for him to *ſtretch out his Hand againſt the Lord's Anointed*; ſince I do not allow any private Subject to kill even *Tyrants*, unleſs in a State of actual War or Battel, wherein they are Aggreſſors, nor then neither, if it can poſſibly be avoided: Yet do I not find it at all unlawful for *David*, or any other private Man, to defend his own Life againſt ſuch Aſſaſſinates as his Prince may ſend againſt him; ſo it may be done without a Civil War, or endangering the Peace of the Commonwealth. And ſo much you your ſelf, tho' coldly, ſeem to yield, when you ſay, that the very Preſence of ſuch a number of Men about *David*, without any hoſtile Act, preſerved him from being ſeiz'd on by ſome officious Perſons, who otherwiſe might have delivered him into *Saul*'s Hands: For I cannot think that *David* would have been at the trouble of keeping ſo many Men only for ſhew, and a Terror to thoſe officious Perſons you mention, without reſiſting of them, if there had been occaſion.

And tho' you tell me, that his being anointed by *Samuel* to be King after *Saul*'s Death, was the firſt ſtep to the Kingdom, to have ſuch a Retinue of valiant Men about him; which made his Advancement to the Throne ſo much the eaſier, and diſcouraged any Oppoſition which might have been made againſt him, and that we ſee it proved ſo in the Event; and therefore have reaſon to believe, that it was thus ordered by God to that very End, I muſt take the liberty ſo far to differ from you.

For firſt, I deſire to know by what Authority *David* could liſt 6 or 700 Men in Arms in *Saul*'s Territories? and whether, according to your Doctrine, they were not Rebels for joining themſelves with one who was declared a Traytor by the King? And tho' you ſay it was thus ordered by God, I grant indeed it was; yet doth it not appear that it was done by any Divine Revelation to *Nathan* or *Abiathar*, but only by the ordinary Courſe of his Providence, like other things in the World: And therefore it is no fair way of arguing for you to affirm, that whatever *David* did in the matter of his own Defence, contrary to your Principles, he muſt needs do it by expreſs Order from God, of which the Scripture is wholly ſilent: Much leſs doth it appear from the Story, that theſe Men whom

David

David kept with him, were only to facilitate his attaining the Kingdom, as you affirm; since the Scripture mentions no such thing, only that after *Saul*'s Death he went up by God's Command to *Hebron*, with the Men that were with him; and thither the Men of *Judah came, and there they anointed* David *King over the House of* Judah. But 'tis no where mention'd, that these Men were of any use to *David* for the obtaining of the Crown, since the Tribe of *Judah* would have made him King, tho' these Men had not been with him: For what could 600 or 1000 Men do against so vast a Multitude as the whole Tribe of *Judah*? And therefore it is evident, that these Forces were for no other End than his own defence. 2 Sam. 2. 4.

And tho' you make very light of this State of War in which *David* was, in relation to *Saul*; yet pray tell me, supposing that the Duke of *Monmouth* had really been (as he pretended) the legitimate Son of King *Charles* II. but by some particular Disgust of his Father, or by the Intrigues of his Competitor, the Duke of *York*, had been forced to fly into *Scotland*, and there to have defended himself with 1000 or 1500 of his Tenants and Followers, tho' without fighting the King's Forces that should have been sent against him, but flying into the *High-lands*, and had there maintain'd himself, as *David* did, by Free Quarters or Contribution of the Inhabitants, till his Father died; would not this have been cried out upon in all the Pulpits in *England*, as a most *Horrid Rebellion* of a *Son* and a *Subject* against his *King* and *Father*, tho' he had never done any Act of Hostility against his Forces, but always fled from them? And yet he, being Heir apparent to the Crown, might have pleaded as well as *David*, that he kept these Soldiers about him, only to keep himself from being murdered by those officious Persons, whom his Father or Uncle might send to apprehend him, and to have such a Retinue of valiant Men about him, as might render his Advancement to the Throne more easy, whenever his Father should die.

I shall not urge, as a farther Proof of the Lawfulness of *David*'s Resistance of *Saul*'s Forces, his Intention to have staid in *Keilah*, and to have fortified it against *Saul*, had not he been informed, that the Men of that City *would have saved themselves by delivering him up to* Saul; since, I confess, it doth not certainly appear by the Text, whether *David* would have staid any longer there than till *Saul* had approach'd near that Place; whether the *Keilites* would have delivered him up, or not. Much less shall I urge that other Example, which some Men make use of, of *David*'s going to the last Battle against *Saul* with *Achish*, King of the *Philistines*: For tho' it be plain he march'd with them as far as *Aphek* in the Tribe of *Issachar*; yet I confess it is not certain, whether he really intended to have assisted them or not, in this War against his Country; since he might either have gone over to *Saul* at the Beginning of the Battel, or else have stood neuter; tho' neither of them would have been very honourable, or consonant with *David*'s Character: Therefore I shall say nothing of this, since the Lords of the *Philistines*, for fear he should prove *an Adversary to them in the Battel*, made him retire again into the Land of the *Philistines*; tho' he seem'd to be very much troubled to be so distrusted, that he might not fight against the Enemies of that King, who had so good an Opinion of him. And therefore I pray you will proceed to those other Examples you have to produce out of the Old Testament. 1 Sam. 23. 1 Sam. 29. 3, 4, 8.

M. Well, since you are not satisfied with this Instance of *David*, (tho' I am glad you allow the Persons, even of Tyrannical Princes, to be sacred) therefore to proceed in the *Jewish* History, *Solomon*, who succeeded *David* in his Kingdom, did all those things which God had expresly forbid the King to do. He sent into *Egypt* for Horses: He multiplied Wives, and loved many strange Women (together with the Daughter of *Pharaoh*) Women of the *Moabites*, *Ammonites*, &c. He multiplied Silver and Gold. And tho' God (who is the only Judge of Sovereign Princes) was very angry with him, and threatens to rend the Kingdom from him, which was afterwards accomplish'd in the Days of *Rehoboam*; yet this did not give Authority to his Subjects to rebel. If to be under the Direction and Obligation of Laws makes a *Limited Monarchy*, it is certain the Kingdom of *Israel* was so. There were some things which the King was expresly forbid to do, as you have already heard; and the Law of *Moses* was to be the Rule of his Government, the standing Law of his Kingdom: And therefore he was commanded, when he came to the Throne, *to write a Copy of the Law with his own Hand, and to read in it all his Days, that he might learn to fear the Lord his God, and to keep all the Words of his Law, and these Statutes, to do them.* And yet being a Sovereign Prince, if he broke these *S. C. R.* p. 37, 38. 1 Kings 11. 1. —— 10. 27. Deut. 17. 18, 19, 20.

Laws, God was his Judge and Avenger; but he was accountable to no Earthly Tribunal. Nor do we find, tho' there were so many wicked and idolatrous Kings of *Judah*, who broke all the Laws of God given them by *Moses*, that ever any of the Priests or Prophets stirred up the People to rebel against them for it.

F. Neither of these Instances do reach the Case in hand; for I grant, that neither the Breach or Non-observance of these Precepts enjoined the Kings of *Israel* by God, nor yet their open Idolatry, were a sufficient Cause for their taking up Arms, or resisting their Kings in so doing; since these were Offences only against God, and in which the People had nothing to do, those being no part of that tacit or implicit Compact of Protection and Preservation, that goeth along with all Kingdoms and Supreme Powers whatsoever. And I have already excepted out of the Causes of *Resistance*, or taking up Arms, the Prince's being of a different Religion from that of his Subjects. And tho' I must own, that the Kings of *Israel* were under the Direction or Obligation of the Law of *Moses*, and so were *limited Monarchs*; yet this Limitation was not from the People, but from God, whose Business it was to revenge the Breach of it as often as they offended, and if they broke those Laws, God only was their Judge and Avenger (as you your self very well observe) who never failed severely to punish this Breach of his Laws.

Yet were not the People of the *Jews* always so nice and temperate as you make them: For, besides the Example of *Rehoboam*, which I have formerly made use of, you will find in the second of *Chronicles* concerning *Amaziah*, who when he turned away from following the Lord, *They* (*viz.* the People) *made a Conspiracy against him in* Jerusalem, *and he fled to* Lachish; *but they sent to* Lachish *after him, and slew him there, and made his Son* Uzziah *King in his stead.* Nor do we read that any were punish'd for killing him, as *Amaziah* put to Death the Servants of his Father King *Joash*, for conspiring against him, as it is related in the tenth Chapter of the second Book of *Kings*: And you'll find in the same Book, that the City of *Libna* revolted (which sure is the highest degree of Resistance) from that wicked King *Jehoram*, who had slain all his Brethren with the Sword, *and walked in the way of the Kings of* Israel, *as did the House of* Ahab, *and wrought that which was evil in the sight of the Lord*, &c. And therefore it is said expressly in the Text, *that the City of* Libna *revolted from his Hand, because he had forsaken the God of his Fathers.* I bring not these Instances to justify Rebellion, but to let you see that it was sometimes practised amongst the *Jews*, tho' you affirm the contrary.

Chap. 25. 27.

Chap. 21. 10.

Ver. 4. 6.

But much more lawful was the *Resistance*, which *Azariah*, and the 80 Priests that were with him, made against King *Uzziah*, when he would have burnt Incense in the Temple. Pray turn with me to the Place, and read what is there said: *And they* (*viz.* the Priests) *withstood* Uzziah *the King, and said unto him, It appertaineth not unto thee,* Uzziah, *to burn Incense unto the Lord, but to the Priests the Sons of* Aaron, *that are consecrated to burn Incense. Go out of the Sanctuary, for thou hast trespassed, neither shall it be for thine Honour*, &c. And when he persisted therein, and took the Censer in his Hand to burn Incense, and that thereupon the Leprosy arose in his Forehead, the Priests thrust him out of the Temple. The LXX render it, ἔστησαν ἐπὶ Ὀτίαν, i. e. *they resisted him. Josephus* says, they drove him out in haste. So that you see they went somewhat farther than *Solomon*'s Question, *Who may say to a King, what doest thou?* And, which is more remarkable, they withstood him before the Leprosy rose upon his Forehead; and no doubt but they would have done the same to him, whether that Judgment had happen'd or not, since he went about to usurp the Priests Office; it not being so much as lawful for him, that was no Priest, to set his Foot within the Temple.

2 Chron. 26.

Ver. 18.

Vide S. Chrysost. *Ecloga de Imperio & Potestate*; where you'll find, that he both owns and justifies this Resistance in the High-Priest.

But if you look into the History of the Kings of *Israel* after their Division from *Judah*, they are so far from teaching us these Lessons of *Passive Obedience* and *Non-resistance*, that you will scarce find any other manner of Succession amongst them, but the killing of one King, and the setting up another; and *Jehu*, for rebelling against and destroying the House of *Ahab*, had the Crown entailed by God's Promise to his Posterity unto the fourth Generation. And tho' I do not produce any of these Examples as fit for our Imitation at this day (since what *Jehu* did was done by God's express Warrant and Command) yet I think they are sufficient Evidences, that neither the Person nor Power of the Kings of *Judah* or *Israel* were always look'd upon as so sacred and irresistible by their Subjects, as you suppose.

2 Kings 10. 30.

M. I am glad you are so ingenuous to confess, that most of these Examples you have brought of the *Resistance* and *Murders* committed by the *Jews* and *Israelites*

upon

upon their Kings were not lawful, or can be propoſed for the imitation of Chriſtian Subjects; and if ſo, pray make what other uſe of them you pleaſe, ſince *a facto, ad Jus non valet Conſequentia*: I cannot deny but that the Succeſſion of the Kings of *Iſrael*, after *Nadab*, the Son of *Jeroboam*, was very confuſed, God ſtirring up ſome or other to rebel againſt them and make them away, as a Puniſhment for their former Rebellion and Idolatry: Thus *Baaſha* killed *Nadab* the Son of *Jeroboam*, and reigned in his ſtead; and for this, and his other Sins, God threatned Evil againſt *Baaſha*, and againſt his Houſe; *Zimri* ſlew *Elah* the Son of *Baaſha*, but he did not long enjoy the Kingdom which he had uſurped by Treaſon and Murder, for he reigning but ſeven Days in *Tirza*, which being beſieged and taken by *Omri*, *he went to the Palace, and burned the King's Houſe over him with Fire, and died.* *S. C. R. p.* 35. 1 *Kings* 15. 25, 26, 27. 2 *Chro.* 16. 7. *Ver.* 18.

This Example *Jezebel* threatned *Jehu* with, *Had* Zimri *Peace who ſlew his Maſter?* And yet *Nadab* and *Elah* were both of them very wicked Princes; and if that would juſtify Treaſon and Murder, both *Baaſha* and *Zimri* had been innocent; but as for the Example of *Jehu*'s killing his Maſter King *Joram*, (you ſay) it was by the particular Command of God, and is no more to be produced as an Example for Rebellion, and the Murder of Princes by the General of their Armies, than that becauſe the Children of *Iſrael* had a Power given them by God, to extirpate and deſtroy thoſe ſeven Nations, whoſe Countries God had given them to inherit, therefore they had a like Right to deſtroy all other Nations whatſoever, that lay near them: And therefore thoſe Actions in Scripture, which are ſometimes commanded by God, for the bringing about the great deſigns of his Providence, by thoſe humane Means that may ſeem unjuſt to us, are not to be produced for Authorities, nor alledged as Examples. 2 *Kings* 9. 31.

F. I ſo far agree with you, and do by no means allow that particular private Men, of what Condition ſoever they are, ſhould diſturb the Commonwealth and murder their lawful Princes, tho' Wicked or Idolatrous, only to ſatisfy their own private Zeal or Ambition, and to ſet up themſelves, who perhaps are altogether as bad or worſe than him they depoſe or make away. But yet I think I might very well produce theſe, to convince you that there were no better Examples for Loyalty or Paſſive Obedience among the *Jews* than other Nations; and therefore that your Examples out of the Scripture do hitherto prove inſignificant; yet I cannot but take notice of one paſſage, wherein, by following the ordinary *Engliſh* Tranſlation, you fall into a great miſtake, where you make *Baaſha* to be ſlain by *Zimri*, becauſe he killed *Nadab*; which as it is there rendered in the *Engliſh* is falſe, for the Words in our Tranſlation are, *becauſe he killed him*, viz. *Jeroboam*, to whom it there immediately relates; which is falſe, for *Baaſha* did not kill *Jeroboam*, but *Nadab* his Son: Neither was it ſuitable to God's Juſtice to deſtroy *Baaſha* for that which he himſelf had ordained him to do; for God, by *Jehu* the Prophet, ſaid to *Baaſha*; *Foraſmuch as I exalted thee out of the Duſt, and made thee Prince over my People* Iſrael, *and thou haſt walked in the way of* Jeroboam, *and haſt made my People* Iſrael *to Sin, to provoke me to anger by their Sins*: And therefore the Text concludes this Narration with theſe Words, *That the Word of the Lord came againſt* Baaſha, *and againſt his Houſe, even for all the Evil which he did in the ſight of the Lord, in provoking him to anger with the work of his Hands in being like the Houſe of* Jeroboam. But the Words which immediately follow, *and becauſe he killed him* (i. e. *Jeroboam*) cannot be truly render'd in our *Engliſh* Tranſlation, for the Reaſon already given; and therefore the beſt Criticks upon this Place tranſlate it thus, leaving out *and, therefore he* (viz. the Lord) *ſmote him*; (i. e. *Nadab*) *by the Hand of* Baaſha; whereas our Tranſlation makes the Scripture to contradict itſelf. I have no more to obſerve from this Hiſtory of the *Kings* and *Chronicles*; and therefore pray proceed to what other Teſtimonies you have to produce.

M. Well, I think I can make it much more plain from other Examples and Precepts out of Scripture, that the *Jews* were not only under high Obligations to be ſubject to the *Higher Powers*, after they were carried Captives to *Babylon*; but alſo not to reſiſt them, tho' they went about to exerciſe their Power never ſo cruelly and tyrannically, even to the Deſtruction of the whole Nation. Now the Prophet *Jeremiah* had given them an expreſs Command; *Seek the Peace of the City whither I have cauſed you to be carried away Captives, and pray to the Lord for it; for in the Peace thereof you ſhall have Peace*: Which made it a neceſſary Duty to be ſubject to theſe Powers under whoſe Government they lived. And accordingly we find *S. C. R. p.* 35. *Jer.* 29. 7.

that

Eſther 6. 2. *S. C. R. p.* 40, 41. that *Mordecai diſcovered the Treaſon of* Bigthana *and* Tereſh, *two of the King's Chamberlains, the Keepers of the Door, who ſought to lay hand on the King* Ahaſuerus; and how numerous and powerful the *Jews* were at this time, and what great diſturbance they could have given to the Empire, appears evidently from the Book of *Eſther*.

King *Ahaſuerus*, upon the ſuggeſtions of *Haman*, had granted a Decree for the Deſtruction of the whole People of the *Jews*; which was ſent into all the Provinces, written and ſeal'd with the King's Ring. This Decree could never be reverſed again, for that was contrary to the Laws of the *Medes* and *Perſians*: And therefore when *Eſther* had found Favour with the King, all that could be done for the *Jews*, was to grant another Decree for them to defend themſelves; which *Eſther* 6. 15, 16, 17. accordingly was done; and the effect of it was, *That the* Jews *at* Shuſan *ſlew* 300 *Men, and the* Jews *of the other Provinces ſlew* 75000, *and reſted from their Enemies*: Without this Decree *Mordecai* did not think it lawful to reſiſt (which yet was a Caſe of as great Extremity and barbarous Cruelty as could ever happen) which made him put *Eſther* upon ſo hazardous an Attempt, as to venture into the King's Preſence without being call'd, which was Death by their Law, unleſs the King *Eſther* 4. 11. ſhould graciouſly hold out the Golden Scepter to them; yet when the *Jews* had obtained this Decree, they were able to defend themſelves and to deſtroy their Enemies: Which is as famous an Example of *Paſſive Obedience* as can be met with in any Hiſtory.

Dan 5. 18, 19. And pray ſee here what the Prophet *Daniel* acknowledges to *Belteſhazzar*. *The moſt high God gave* Nebuchadnezzar *thy Father a Kingdom, and Majeſty, and Glory, and Honour: And for the Majeſty that he gave him, all People, Nations and Languages trembled and feared before him: Whom he would he ſlew, and whom he would he kept alive, and whom he would he ſet up, and whom he would he pulled down.* And if theſe Heathen Kings received ſuch a Power from God, as the Prophet here affirms, St. *Paul* has made the Application of it, *that he that reſiſteth, reſiſteth the Ordinance of God*: And I think theſe Examples may ſerve out of the *Old Teſtament*, and therefore I ſhall conclude with the Saying of the Wiſe Man, who was both a Prophet *Eccl.* 8, 2, 3, 4. and a King: *Where the Word of a King is, there is Power, and who may ſay unto him, What doeſt thou?*

F. Tho' this laſt Proof be the ſtrongeſt you have yet brought, yet I think it will not reach the Point in queſtion; to prove that *no Reſiſtance whatſoever, tho' for ſaving the Lives of a whole Nation, can be lawful.* I grant indeed, that the Command of the Prophet *Jeremiah, of praying for the Peace of the City whither they were carried away Captives*, was to be obeyed, being obliged to do it, not only by the Laws of Nature, and in regard of thoſe Benefits of Protection, and enjoying the free Exerciſe of their Religion and Liberties without being made Slaves, tho' they had been carried Captives; which was no more than removing them out of one Country and ſettling them in another, according to the Cuſtom of the *Eaſtern* Princes of thoſe Times; when they would, by removing the beſt and greateſt of the People out of a conquer'd Country, prevent their rebelling againſt them, as they had done before; but that they enjoyed a Property in their Lands and Eſtates after their Captivity, is certain, by the Prophets commanding them to build and plant Vineyards in the Country of *Babylon*, during the 70 Years Captivity foretold by him from God. So likewiſe I grant it to be a neceſſary Duty in Subjects, tho' Strangers, to be Faithful and Obedient to thoſe Princes and States under whoſe Governments they live; and therefore *Mordecai* no doubt perform'd his Duty, when he diſcovered the Treaſon of the King's Chamberlains that thought to kill him.

But to come to your main Argument, that it was unlawful for the whole Nation of the *Jews* to reſiſt thoſe who were impowered, by the Decree of King *Ahaſuerus*, to maſſacre and deſtroy them, I ſhall not diſpute with you about the Matter of Fact, as you have related it, but only in this particular; that whereas *Eſther* 8. 11. you ſuppoſe, till the King had iſſued out a ſecond Decree, *wherein he granted the* Jews *which were in every City to gather themſelves together, and to ſtand for their Lives, to deſtroy, to ſlay, and cauſe to periſh all the Power of the People and Province that ſhould aſſault them*, &c. *and to take the Spoil of them for a Prey*; without which Decree, you ſay, *Mordecai* did not think it lawful to reſiſt, tho' it was a Caſe of as great Extremity as could ever happen; and that therefore *Eſther* was put upon ſo hazardous an Attempt, as to venture to obtain this Decree, tho' with the Peril of her Life;

but

but that when they had once obtain'd it, they were then, and not before, enabled to defend themſelves, and deſtroy their Enemies. In anſwer to which, I muſt needs tell you, that you do not fairly repreſent the latter part of this Story; for it no where appears in the Text (tho' you are pleaſed to add it) that *Mordecai* did not think it lawful for the *Jews* to reſiſt till this Decree was obtained; for it is only there ſaid, *That he ſent* Eſther *to the King, and as ſoon as ſhe came into his Preſence, ſhe fell down at his Feet, and beſought him with Tears to put away the Miſchief of* Haman *the* Agagite. (Pray read the Words) *And ſhe ſaid, if it pleaſes the King, and if I have found favour in his ſight, and the thing ſeems right before the King, and I be pleaſing in his Eyes, let it be written to reverſe the Letters deviſed by* Haman *the Son of* Hammedatha *the* Agagite, *which he wrote to deſtroy the* Jews *which are in all the King's Provinces.* By which you may ſee that *Eſther*'s Requeſt was not for a Liberty to defend themſelves, (as you ſuppoſe) but only to try if ſhe could get the King to reverſe the firſt Decree obtained by *Haman* to deſtroy them. But becauſe the King's Decree, when once iſſued out, was not to be reverſed; therefore he iſſued this ſecond Decree, to give the *Jews* a Legal or Civil Power to gather themſelves together, and ſtand upon their Defence againſt all that ſhould aſſault them; which was ſo far obeyed, that the Rulers of the Provinces and other Officers of the King, inſtead of deſtroying, helped the *Jews*, *becauſe* (ſays the Text) *the fear of* Mordecai *fell upon them.*

Eſther 8. 3.

Chap. 9. 3.

So that tho' I own this Decree gave them a legal Power to ſtand upon their defence; and did likewiſe hinder the King's Officers from heading the People, and putting the firſt Decree for their Deſtruction in Execution, as otherwiſe they would have done, had it not been for this laſt, and for that great Power which they perceived *Mordecai* had at Court; yet doth it not therefore follow, that it was before that abſolutely unlawful for the whole *Jewiſh* Nation to have defended their Lives againſt thoſe Officers or others who would have gone about to deſtroy them, and have totally extirpated their Nation. So that I take this Decree not to confer any new Right in the People of the *Jews* to defend themſelves, but only to be a Confirmation of that natural Right of Self-defence, which all Nations, and every particular Member of Mankind have to preſerve themſelves: And tho' I grant that particular Perſons are often obliged to give up this Right for the publick Peace and Safety of the Commonwealth; yet doth not this Law extend to whole Nations, or ſuch Bodies of People without which the Commonwealth cannot well ſubſiſt.

And therefore I leave it to any unprejudiced Perſon, to judge whether it had not been better that the *Jews* ſhould have thus reſiſted and ſaved their Lives, tho' without this ſecond Decree, which only diſcouraged the King's Officers and others from falling upon them, than that all God's peculiar People ſhould have lain at the Mercy of their Enemies, to be deſtroyed according to the firſt cruel Decree.

But farther to convince you that the *Jews*, after the Captivity, did not think it unlawful to make uſe of defenſive Arms againſt cruel and perſecuting Tyrants, who went about to deſtroy their Religion and Nation; it is apparent from the famous Example of the Prieſt *Mattathias*, with *Judas Maccabeus* and the reſt of his Sons, who ſucceſſively headed the People of the *Jews* in that obſtinate and noble Reſiſtance which they made againſt *Antiochus Epiphanes*, tho' then their Soveraign, who when he had prophaned the Temple, and would have forced the *Jews* to renounce their Circumciſion, and to have ſacrificed to Idols, under pain of Death; they joyned together and reſolved to defend themſelves, and to ſtand up for their Religion and Nation, then ready to be deſtroyed: And you find by the Hiſtory, as it is related in the Books of the *Maccabees* and *Joſephus*, that God did bleſs thoſe Arms with Succeſs, which they had taken up in their own defence, againſt a Prince infinitely more Powerful than themſelves, who, with his Predeceſſors, had been their Soveraigns for above 130 Years. And tho' *Antiochus* died long before the end of the War, yet did they ſtill proſecute it againſt his Succeſſors: Nor did they ever make Peace with them, till *Jonathan*, Brother of *Judas* (who had before recovered and purified the Temple) was acknowledged High-Prieſt by *Alexander* the pretended Son of *Epiphanes*, and that they had caſt off that Yoke of Subjection which they were under to the Kings of *Syria*, and had ſettled the Government of their Nation upon the Princes of the *Aſmonæan* Race, in gratitude of that Deliverance they ſo juſtly owed to their Piety and Courage; and

See the firſt and ſecond Books of the Maccabees.

which

which continued in this Family till the Conqueſt of *Judea* by *Pompey*, after 106 Years free Enjoyment of it: So that it is plain, the *Jews*, before the coming of *Chriſt*, both Prieſts and People, did not think it unlawful to defend their Lives and Religion, in caſe of great Extremity; and that our Saviour *Chriſt* hath any where, by his Goſpel, retrenched whole Nations of that Liberty, lies upon you to prove.

But to conclude; as for the Text you have cited out of the *Proverbs*, that will do you as little Service; for tho' I grant, it is true, that no Man can ſay to an abſolute King or Monarch, *What doſt thou? i. e.* call him to account as his Superior; yet doth it not therefore follow, that a whole People or Nation have no Power to defend themſelves, in any Caſe whatſoever, againſt his unjuſt Violence or Tyranny; this not being the Act of a Superior, but an Equal (as I have already ſaid) nor any Political, but a Natural Power.

M. I confeſs this is the notableſt Example of Reſiſtance that you have brought yet: But I think it may be eaſily anſwered, if we ſuppoſe with *Joſephus* and other Authors, that tho' *Alexander* the Great was certainly poſſeſſed of *Paleſtine*, by Right of Conqueſt, and the Submiſſion of the High-Prieſt *Jaddus* unto him; yet his chief Captains conſpiring together, made ſuch a ſcambling Diviſion of the Empire among themſelves as they could, every one almoſt ſeeking how he might ſuppreſs the reſt, and attain the whole alone for himſelf; ſo as thereupon the *Jews* were as free from the *Macedonians*, as any other of their bordering Neighbours; none of the ſaid Captains having any lawful Intereſt or Title to *Judah*: But that which turned to the Benefit of ſome others, brought a great Detriment (for want of Ability) unto them; for one of the ſaid Captains, *viz. Antiochus*, having gotten to himſelf a very great Kingdom in *Syria*; and another, *viz. Ptolomy*, in *Egypt*, the *Jews* dwelling betwixt them both, were miſerably (on every ſide) vexed by them: Sometimes the *Egyptians*, by Oppreſſion and Force, brought them under their Subjection, and impoſed great Tributes upon them; and ſometimes the *Syrians* growing mightier than the *Egyptians*, did likewiſe greatly afflict them; eſpecially in the Reign of *Antiochus Epiphanes*, whoſe Invaſion and Government was moſt unjuſt and Tyrannical: *He ſhed innocent Blood on every ſide of the Sanctuary; ſpoiled the Temple, erecting in it the Abomination of the Gentiles, and cauſed it to be named the Temple of Jupiter Olympius.* Not to mention the Prophanation of the Law, and unſpeakable Cruelties exerciſed upon thoſe who refuſed to offer Sacrifice unto Idols; until *Mattathias*, moved with the monſtrous Cruelty and Tyranny of the ſaid *Antiochus*, made open Reſiſtance, the Government of that Tyrant being not then either generally received by Submiſſion, or ſettled by Continuance: So that after the Time of *Alexander the Great*, the *Jewiſh* Nation was governed by their own High-Prieſts and Sanhedrim, and lived according to their own Laws in all Matters both Civil and Eccleſiaſtical; tho', more often, I own, with a Subordination to the Soveraignty of the Kings of *Egypt*, till this Invaſion of their Religion and Liberties by *Antiochus*: So that they had a legal Right to the free Exerciſe of their Religion, which could not, without the higheſt Violence and Injuſtice, be taken from them.

1 *Macc.* 1. 37.

F. Notwithſtanding what you have now ſaid concerning this Action, I doubt not, but if you will conſider *Joſephus* a little better, as alſo the two Books of the *Maccabees*, you will find, that not only *Antiochus Epiphanes*, but alſo *Antiochus the Great* and *Seleucus Philopater*, were true and lawful Monarchs of *Cœlo-Syria*, and conſequently of *Paleſtine*. And tho' I grant there had been Wars between *Antiochus the Great* and *Ptolomy Philopater*, concerning the Dominion of that Country; yet it is plain out of *Joſephus*'s Antiquities, *Lib.* 12. That *Antiochus* had reconquer'd all this Country from the *Egyptians*, tho' he afterwards parted with half of the Tribute of it to *Ptolomy Epiphanes* King of *Egypt*, as a Dowry with *Cleopatra* his Daughter; yet ſurely he retained the Supreme Dominion of it to himſelf; for we find in the ſecond Book of *Maccabees*, that *Seleucus Philopater* ſupplied all the Coſts of the Sacrifices out of his own Revenues; that is, of thoſe Sacrifices that were offered for the Health of the King; as they were afterwards for the *Roman Emperors*: And we find in the beginning of both the Books of the *Maccabees*, that the King of *Syria* had Power to make and unmake the High-Prieſt whenever he pleaſed, as having the Dominion over *Cœlo-Syria* and *Phœnicia*; over which, as appears by the ſecond Chapter of the ſecond Book of *Maccabees*, *Seleucus* had made *Apollonius* Governor under him; ſo that there cannot be more certain Marks of Soveraign

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Cap. 3.

Majeſty

Majesty exercised by the *Great Turk* over any of those Tributary Princes or Governors, which he places and displaces at his pleasure. And therefore, it is apparent, notwithstanding what you have said to the contrary, out of I know not what Authors, that the Government of *Antiochus Epiphanes* was an unjust Usurpation; for, bating this Tyranny in the exercise of it, he had a juster Title than ever *Alexander* the Great had; since, besides Conquest, he had your own Right of Prescription by three Descents: And I have *Grotius* (besides other more antient Authors) on my side in this matter. And pray now see *Grotius*'s Opinion, in his first Book *de J. B. & P. cap.* 4. which I will read into *English*; and I think will § 7.
make sufficiently for my Opinion.

"The Fact of the *Maccabees* may seem like to this, (*viz.* the Example of *David* "before going) for that some do defend these Arms by this Pretence, as if *An-* "*tiochus* were not their King, but an Invader, I suppose to be vain; since no "where in all the History of the *Maccabees*, *Antiochus* is called by any other "Name but that of the *King*; and that deservedly, since the *Jews* had long since "acknowledged the Empire of the *Macedonians*, in whose Right *Antiochus* had "succeeded; for that the Law forbids a Stranger to be set over the People is "only to be understood of a voluntary Election, and not of that which the People "were forced to submit to by a Necessity of the Times. But what others say, "that the *Jews* then used the Right of a People, who were in their own Power, is "not true. For first of all, the *Jews* being conquered by *Nebuchadnezzar*, by the "Right of War, obeyed by the same Right the *Medes* and *Persians*, as Succes- "sors to the *Caldeans*, whose whole Empire devolved upon the *Macedonians*, (with "which *Justin* likewise agrees in his 36th Book:) Hence the *Jews* are said by "*Tacitus*, to have been, during the Empire of the *Medes* and *Persians*, *Vilissima* "*pars Servientium*. Neither did they covenant any thing with *Alexander*, and his "Successors, but submitted themselves to their Dominion without any Condi- "tions, as they had been under that of *Darius* before. But if the *Jews* were "sometimes permitted to observe their own Rights and Laws, that was meerly "precarious, proceeding from the Beneficence of those Kings, and not from any "Law superinduced on their Empire. Therefore there is nothing which can "defend the *Maccabees* in this matter, beside the most extreme and most certain "Danger, (*viz.*) as long as they so contained themselves within the bounds of "Self-defence; and that according to *David*'s Example, they retired into desart "Places for their Security; nor took Arms until they were set upon." So far *Grotius*.

M. I shall not farther dispute this Point, though I thought I had very good Authority on my side; but I think I have a better Apology to make for this Action of theirs, *viz.* That God might very well, either by an express Revelation, or at least a Divine Impulse of his Holy Spirit, command or excite *Mattathias*, and his Sons the *Maccabees*, to take Arms in defence of those Privileges, which had been so often confirmed to them, 'till at last it pleased God to restore the *Jews* to an absolute Liberty for some Years, under their own Princes; which they abusing, by Cruelty and Ambition, tyrannizing over their Subjects, and murdering their Brothers, it was no wonder that God was pleased to take away the Scepter from them, and confer it upon the *Romans*, who gave it under them to *Herod*, the Son of *Antipater*, the *Idumean*. And therefore you can with no more Justice urge this Example of the *Maccabees*, to prove Subjects may resist the Supreme Powers, than to alledge the Example of *Jehu* as an Authority for Rebellion: Since, as I said before, whatsoever God is pleased to bring about by humane Means, but yet by his particular Precept or Revelation, is to be still look'd upon as an Exception from the general Rules of Non-resistance and Passive Obedience.

F. I confess what you say would fully answer my Objection, could you as evidently make out, from the History of the *Maccabees*, or *Josephus*, that these *Maccabean* Captains did at all act in those Wars they made, by any express Precept, or Divine Revelation from God, as without any just Grounds you suppose it. And therefore, I desire you would shew me, if you can, any Testimony out of the Books of the *Maccabees*, or *Josephus*, to prove that they acted thus by vertue of any such Divine Inspiration, and then I am contented to yield the Cause; which, if you cannot do (as I think you can't) I must look upon my self as to

have had the *better* in this Controverſy, concerning the Right that Subjects had to reſiſt, in Caſe of Neceſſity, before the coming of Chriſt.

M. Yet for all that, ſome of the Fathers, and modern Commentators on theſe Books of the *Maccabees*, do hold, that ſuch wonderful Victories, as were obtained by *Judas* and his Brethren, could not have been without the miraculous Providence of God, and conſequently a Divine Inſpiration aſſiſting them; eſpecially conſidering the ſtrange Judgment that we read fell upon *Antiochus* for his Impiety; and that *Judas* had oftentimes Divine Revelations, appears by that Dream or Viſion, mentioned in the laſt Chapter of the ſecond of *Maccabees*; of *Jeremiah* the Prophet's giving him a *Golden Sword*, and in giving it, ſpeaking thus, v. 16. *Take this Holy Sword, a Gift from God, with which thou ſhalt wound the Adverſaries*: Which Dream, if it were ſent from God, as is highly probable, ſufficiently confirms the commonly received Opinion, that this Reſiſtance of the *Maccabees* was by Divine Warrant, or Inſpiration: And whenever you can ſhew me, ſince the coming of Chriſt, any Reſiſtance ſo miraculouſly *abetted* as this was, I will grant it alſo to be lawful.

F. I do join Iſſue with you in this, and muſt ſtill ſuppoſe (until you give me better Evidence to the contrary) that the *Jews*, under the Conduct of the *Maccabees*, did not take up Arms againſt *Antiochus*, and his Succeſſors, by vertue of any Divine Inſpiration to *Mattathias*, or any of his Sons: For it appears plainly, as well by the Scripture, as by *Joſephus*'s Teſtimony, that there was no more Divine Revelation after *Malachi*; neither do the Books of the *Maccabees*, *Joſephus*, *Sulpitius Severus*, or any other antient Eccleſiaſtical Writer, mention theſe *Maccabees* as Men inſpired by God. I grant, indeed, they might be excited by ſome divine Impulſe of God's Spirit to do what they did: But this is ſo far from being at all miraculous, that I do ſuppoſe that divers great and good Men have been, in our latter Times of Reformation, ſtirred up by the ſame Divine Spirit to undertake, and perform extraordinary things, for the Reformation of Religion, and the Deliverance of God's Church and People. And therefore, as for the *Viſion*, or *Dream*, which you mention, it doth not appear, that it was any more than an ordinary Dream; and if this might paſs for a Proof of a Divine Revelation, I could quote you many ſuch Dreams as this, out of the Lives of *Luther*, *Calvin*, and divers others of the firſt Reformers; whom I ſuppoſe you will not maintain to have had any expreſs Revelation to do what they did, contrary to the Civil and Eccleſiaſtick Laws of thoſe Princes and States under which they lived. And 'tis true theſe Books are not held Canonical; yet they were always eſteemed in the Church as ſacred Writing, as written, tho' not by inſpired, yet by pious Men: And though they are not received in matters of Faith and Doctrine, yet you know very well they are commanded to be read in our Churches, as containing excellent Precepts, and Examples in matters of Morality; and though therefore, though perhaps they would not be a good Authority to a Presbyterian, yet, I hope, we of the Church of *England* cannot refuſe them as Rules of Morality. But I think we are now come to the laſt Inſtances that can be brought before the coming of Chriſt; and therefore pray will you now proceed with your Quotations out of the New Teſtament, which, I ſuppoſe, you have ready for me.

M. I confeſs I am not able, in a Story ſo imperfectly related as this of the *Maccabees*, to prove they had God's expreſs Warrant for this Reſiſtance; and you, on the other ſide, produce but a negative Argument, that they had not (*viz.*) becauſe neither *Joſephus*, nor the Book of the *Maccabees* expreſly mention any ſuch thing: And yet for all that *Mattathias* might, (for ought that you, or I know) have acted in this matter by Divine Revelation; ſince, as the *Rabbins* ſuppoſe, there was for a long time after the Times of the Prophets, a lower ſort of Revelation given by God to ſome particular Men called *Batcol*, that is, the *Daughter of the Voice*, which ſeems to have been ſome private or inward Voice, by which God revealed his Will in ſome particular Caſes. And we read that long after this, *Joſephus* relates, that *Hircanus*, the laſt good High-Prieſt of the *Maccabean* Race, had the Gift of *Prophecy* by Divine Revelation: And why his great Grandfather might not have it likewiſe, I ſee no Reaſon. Beſides all this, there might be other Reaſons that God might allow to the People of the *Jews* a greater Liberty of Reſiſtance, even without Civil Authority, to revenge the Prophanation

of

of his Temple, and Religion, being the Place where he was pleaſed particularly to place his Name, than are allowed to us Chriſtians at this Day, who have no ſuch viſible Temple, nor are under ſuch ſevere Obligations to extirpate Idolatry. So that what *Mattathias*, and the People of the *Jews* acted in this matter, they might do it by the Right of Zealots, for the defence of the Law of *Moſes*; even as *Phineas* did, who, by killing *Zimri* and *Cozbi* for Fornication and Idolatry, did that which in another occaſion, and at another time, would have been down-right *Murder*.

But be it as it will, I think we Chriſtians are by the Laws of the Goſpel tied to a ſtricter Subjection to the Supreme Powers, (if it be poſſible) than the *Jews* themſelves were; and whatſoever they might have done under *Antiochus* for their own Defence, and to avoid Perſecution, yet Jeſus Chriſt doth now require *higher things* of us; and hath by his own Example, as well as Precept, forbidden us to *reſiſt* the Supreme Powers for any Perſecution for Religion whatſoever; ſince he hath ordained his Religion to be propagated, and defended by Sufferings and Perſuaſions, and not by force of Arms, againſt the Will of the Supreme Powers; and if not for Religion, the moſt weighty of all Concerns, ſurely not for any temporal thing whatſoever. But the Proof of this requires more time than this Evening will afford, without treſpaſſing too much upon your, as well as my own Repoſe. And therefore, I ſhould be glad of another Evening's Converſation with you, to free your Mind, if it were poſſible, from this dangerous Error, and to bring you over to the *true Belief*, and *Practice* of the Primitive Chriſtians, and of our Mother, the *Church of England*, who treads exactly in their Steps.

F. I humbly thank you for your great Kindneſs to me, and the Pains you have taken, as alſo for what you intend to take for the better Information of my Conſcience. And therefore, if you pleaſe; and that you have no other occaſion to draw you forth out of your Lodgings, I will wait upon you again to-morrow in the Evening about Seven; and ſhall think it a very proper Work for the Lord's Day, to have my Conſcience better informed by thoſe Teſtimonies, which you ſay you will bring out of the New Teſtament, and Writings of the Primitive Fathers, and Church Hiſtorians, for my Inſtruction: And if you can out of them prove to me, that *all Reſiſtance whatever is unlawful*, I promiſe you, upon the Word of an honeſt Man, to become a Proſelite to this Doctrine.

M. I humbly thank you, Sir, for your great Candour and Ingenuity: And though I am no profeſs'd Divine, yet I hope, by the help of the Scripture, and thoſe Quotations that I can produce out of the Fathers, as alſo from the conſtant Practice of the Primitive Church, to prove theſe Doctrines of Paſſive Obedience and Non-reſiſtance to be the true, antient and apoſtolical Belief. But it is now late, and I will not trouble you any longer to-night, therefore ſhall take my leave of you. And ſo, Sir, your humble Servant.

F. Dear Sir, good Night; yours moſt heartily. Well, to-morrow I will wait upon you, as I appointed.

M. Pray be ſure to come at your Hour; for I'll expect you.

Bibliotheca Politica.

DIALOGUE IV.

Whether Abſolute Non-reſiſtance of the Supreme Powers be enjoined by the Doctrine of the Goſpel, and was the antient Practice of the Primitive Church, and the conſtant Doctrine of our Reformed Church of England.

M. YOUR Servant, Sir: I ſee you are better than your Word, ſince you come ſomewhat before the time appointed.

F. I do not deſerve any great Commendation for it; for this Evening being a time of leiſure, I had nothing elſe to do but to wait on you: And indeed I was impatient 'till I was with you; ſince I deſire nothing more, than to receive Satisfaction in this weighty Controverſy; ſince I know how great a Maſter you are both in Divine, as well as Civil Knowledge. And therefore, I beſeech you to proceed in the Method I at firſt propoſed, by giving me theſe places of Scripture out of the New Teſtament, which you ſuppoſe prove your Doctrine; and in the next place ſhew me, that they were always underſtood by the antient Fathers, as well as the Practice of the whole Primitive Church, in that Senſe.

M. I very well approve of your Method; and therefore, to go on where we left off, I ſhall, in the firſt Place, lay down ſome plain, and eaſy Propoſitions, as the Grounds of our future Diſcourſe, which, I hope, you will have no Reaſon to deny.

Firſt therefore, I ſuppoſe, that our Saviour's Kingdom not being of this World, he came not to alter the Civil Government or Polity of it, (as you have already aſſerted.) And therefore did not alter any of thoſe Rights of Sovereign Powers, and thoſe Meaſures of Obedience and Subjection which were before fixed and determined by God himſelf: Neither hath given the People (either conſidered as particular Men, or as a collective Body) any Power or Right to reſiſt, or rebel againſt ſuch Supreme Magiſtrates, though they never ſo much abuſe their Power, by their tyrannical Government, either by perſecuting the true Religion, or by any other Violences and Oppreſſions whatſoever.

S. C. R. ch. 2. p. 43.

And our Saviour himſelf tells us, *That he came not to deſtroy the Law, and the Prophets, but to fulfil it*; that is, to fulfil the antient Types and Prophecies in his own Perſon, to perfect an External and Ceremonial, by a Real and Evangelical Righteouſneſs; to perfect the moral Laws with new Inſtances and Degrees of

Ibid. 44. Matt. 5. 17.

Virtue and Obedience; but he abrogated no moral Law, and therefore not the Laws of Obedience and Subjection to Princes, which have always been reduced to the Fifth Commandment. Pray tell me how you approve of this Doctrine?

F. I do readily agree to the greateſt part of it; but yet as our Saviour hath not been pleaſed expreſly to enjoin us to reſiſt the Supreme Powers, when they manifeſtly break and tranſgreſs all the Ends of Civil Government, and conſequently diſſolve it; ſo on the other ſide, he came not to deſtroy thoſe natural Rights, which Mankind enjoyed before his coming, of defending themſelves, and providing for their own Happineſs and Security, when their Civil Governors either could not, or would not protect them. And as I grant, that our Saviour made no Alteration in Civil Governments, by abridging the Rights of Sovereign Power; ſo likewiſe hath he not conferred upon them any new Rights or Prerogatives of *deſtroying*, or *enſlaving* their Subjects, without any Contradiction or Reſiſtance; and conſequently hath altered nothing in thoſe natural Rights, or Means which the People had before his coming, of hindering the Supreme Powers from perverting thoſe main Ends of Government, the Happineſs and Preſervation of the People. And that this Liberty doth not any way deſtroy thoſe Rights or Prerogatives which are neceſſary for their own Security, and the well-governing of their People, I have, I think, ſufficiently proved in our laſt Converſation. So that, unleſs you can now ſhew me, by ſuch expreſs Authorities, as that I can have no reaſonable ground to deny it, I hope you will pardon me, if I cannot believe, that Chriſt by his coming into the World has taken away, or abridged that natural Right which Mankind before enjoyed (even after the Inſtitution of Civil Government) of Reſiſtance or Self-defence, in Caſes of Extremity, againſt thoſe who exerciſe nothing of that Supreme Power, with which God hath inveſted them, but the meer Title. For had the Intent of our Saviour's coming been for this End, he had, inſtead of freeing us from the Yoke of the Law, laid a much heavier upon our Necks, if the Doctrines of Paſſive Obedience and Non-reſiſtance are to be taken in that large Senſe, and unlimited Extent, that their Aſſerters have been pleaſed to give them. So that though I grant our Saviour came to perfect, and not to abrogate the moral Law, with new Inſtances of Virtue and Obedience, and therefore hath not abrogated any Laws of Obedience and Subjection to Princes; ſo hath he neither abrogated the great Law of Nature, of Self-defence in the People, when they are univerſally aſſaulted, or oppreſs'd in their Lives, Liberties or Properties.

And tho' I grant Obedience to Princes hath been reduced to the Fifth Commandment; yet neither doth that, by commanding us to honour our Father and Mother, forbid all Reſiſtance of Children to the violent and unreaſonable Actions of their Parents, much leſs of thoſe whom they may command, or ſet on to kill or ruin us, as I have, I think, ſufficiently proved at our firſt Conference. And therefore, I pray, proceed to your Proofs themſelves, and ſhew me, that they prove as much as you have affirmed.

M. Before I come to my Proofs, I pray give me leave to obſerve to you, by way of Introduction, that as our Saviour hath left the Government of the World as he found it, ſo he hath, beſides all this, given ſuch admirable Laws, as will both teach Princes to govern, and Subjects to obey better, which is the moſt effectual way to ſecure the publick Peace and Happineſs, to prevent the Oppreſſion of Subjects, and Rebellion againſt Princes: But he has not interpoſed in new modelling the Governments of the World, which is not of ſuch Conſequence as ſome Men imagine. It is not the external Form of Government, but the fatherly Care, Prudence and Juſtice of Governors, with the dutiful Obedience of Subjects, which can make any People happy. If Princes and Subjects prove good Chriſtians, they may be happy under moſt forms of Government; if they be not, they can be ſo under none. Had our Saviour given Subjects Liberty to reſiſt, to depoſe, to murder tyrannical Princes, he had done them no kindneſs at all: For to give Liberty to Subjects to reſiſt, is only to proclaim an univerſal Licence to Factions and Seditions, and Civil Wars: And if any Man can think this ſuch a mighty Bleſſing to the World, yet methinks it is not a Bleſſing proper for the Prince of Peace to give. *S. C. R. p. 46.*

But he who inſtructs Princes to rule as God's Miniſters and Vicegerents, and to expreſs a fatherly Care and Concern for the Happineſs of their Subjects, and

that

Ibid. p. 47. that teaches Subjects to reverence and obey their Prince as the Image of God, and quietly to submit, and yield to his Authority, and that inforces these Laws both on Princes and Subjects in the Name and Authority of God; and from the Consideration of the future Judgment, when Princes, who abuse their Power, shall give an account of it to their great Master, and when Subjects who resist, shall receive to themselves Damnation; and those who patiently suffer for God's sake shall have their Injuries redress'd, and their Obedience rewarded: I say, such a Person as this, takes a more effectual Course to reform the Abuses of Civil Power, and to preserve good Government in the World, than all your *wise Politicians*, and *State-menders*, who think to reform the Government of the World by some State-spells and Charms, without reforming those who govern, and those who are governed. This our Saviour hath done, and this is the best thing that could be done; nay, this was all that he could do in this Matter. He never usurp'd any Civil Power and Authority, and therefore could not new model the Governments of the World: He never offers any external Force and Compulsion to make Men obey his Laws, and therefore never forces Princes to rule well, nor Subjects to obey. But he has taken the same care of the Government of the World, as he has done of the other Duties of Piety and Virtue, that is, he has given very good Laws, and threatned those who break them with eternal Punishments; and as the Laws and Religion of our Saviour prevail, so will the Governments of the World mend without altering the Model and Constitution of them: But I come now to those places of Scripture I have to urge against your Opinion. ——

Ibid. p. 47.

Ibid. p. 48.

P. I pray, Sir, pardon me, if I interrupt you; and beg leave to make some Remarks upon this Preface you have now made. I will not deny, but you have spoken some honest Truths, in what you have now said, though not without a Mixture of divers Mistakes: For though I grant that Jesus Christ hath not interposed in new modelling the Governments of the World, so he hath likewise given Princes no Authority to alter those which they find ready made, and modelled to their Hands, in those Countries wherein God hath placed them at the Helm. And though you tell me those Models of Government are not of such consequence as some Men imagine, yet I hope you ought to have a better Opinion of this of *England*; since it is only to this Frame of Government, that you'll own we owe all our Freedom and Happiness above divers other Nations, our Neighbours: Since, if it were not for our Laws, and Original Constitutions to the contrary, I do not see why we may not be made as absolute Slaves as any in *Turkey*, whenever the King pleases. I grant indeed, that it is the fatherly Care, Prudence, and Justice of Governors that can make any People happy: But I desire you to shew me how many Governments there are in the World where Princes exercise this fatherly Care as they ought, without any known Laws; or where Subjects express a dutiful Love and Obedience to their Governors (unless servile Fear must be called so) whilst they find themselves miserable Slaves and Beggars.

I also yield, that if Princes and Subjects are good Christians, they may be happy under most forms of Government; and if not, they can be happy under none, is true in this Sense, if you take Happiness for the Hopes of a future Life: But otherwise there have been divers Princes who have been very good Christians, and yet by carelessness of their Affairs have governed their Subjects very ill: And likewise, I know some Subjects, who have been very loyal to their Prince, and very good Christians, and yet have been made very miserable; as Witness the Protestants in *Hungary* and *France*.

But as I do not suppose, that our Saviour hath given Subjects Liberty to resist *tyrannical* Princes upon every slight Occasion, much less to *depose* or murder them; yet will it not follow, that if he hath given Liberty to Subjects to resist in some Cases, it would only serve to proclaim an universal Licence to Seditions, and Civil Wars: Since I do not suppose such Wars to be lawful, but when the People are in as miserable Condition as a State of War can bring them to: And if our Saviour had not allowed them this Power, no rational Man wolud think it a Blessing proper for the Prince of Peace to give, or to come into the World to introduce Slavery, and the arbitrary Power of the Sword.

Though I grant he instructs Princes to rule as God's Ministers and Vicegerents, and to express a fatherly Care and Concern for the Happiness of their Subjects; and

and that he likewiſe teaches Subjects to obey their Princes: Yet you know too well, how ſeldom theſe Inſtructions have all thoſe good Effects either with the Princes, or People. And therefore, as on the People's ſide, beſides thoſe Obligations of Conſcience you ſpeak of, there are likewiſe ordained temporal Puniſhments to keep Subjects to their Duty; ſo likewiſe there is often need of ſomething elſe beſides meer Conſcience and Honour, to keep Princes from tyrannizing over their Subjects.

And though I ſuppoſe the Conſideration of a future Judgment may go a great way with ſome Princes, to make them perform that great Truſt God hath given them; yet pray tell me, have you not read (if not known) ſome Princes in the World of late Times, who have either believed no ſuch thing as eternal Damnation, or at leaſt have found a way by nice Diſtinctions, or Equivocations, to evade all Laws, Oaths, and Promiſes whatſoever? And what Satisfaction is it to me, or how doth it ſerve to alleviate my Miſery, when I am made a Slave, and a Beggar, that thoſe that had the Rule over me will be damned for ſo doing? But you tell me, that I muſt quietly and patiently ſuffer this for God's ſake, and that then we ſhall have our Injuries redreſs'd, and Obedience rewarded. I grant indeed that a ſingle Perſon may be rewarded in this kind, for preferring the Common Good or Quiet of the Nation before his own Private Intereſt: But that whole Nations, and Bodies of People, are obliged by the like Rule, I utterly deny, ſince I do not find where our Saviour either enjoins or requires ſuch an abſolute Subjection at their hands; and if he doth not, it is no better than Will-worſhip to pay it, and therefore it ſtill lies upon you to prove it to me.

To conclude; I think it may be a more effectual Courſe, to preſerve the main Ends of Government, for the People ſometimes to *reſiſt the inſupportable Tyranny and Violence* of the Supreme Powers in thoſe Caſes of Extremity I have already put, than to let thoſe, who have got the Power over us in their hands, do whatſoever they pleaſe with it, to our Ruin, without any controul. And alſo, I deſire you to conſider, whether the Fear of ſuch Reſiſtance from Subjects, when thus outraged and oppreſs'd, may not often be a more powerful State-ſpell or Charm (as you call it) to keep the Supreme Powers in their Duty, than thoſe many Sermons, and other Diſcourſes that have been lately preach'd and publiſh'd, that *their Power is irreſiſtible*; and that therefore, all their Subjects are bound to endure whatſoever Tyranny they have a mind to exerciſe upon them. In ſhort, I abſolutely agree with you, that as our Saviour never uſurp'd any Civil Power, or Authority, and therefore did not new model the Governments of the World; ſo hath he alſo left Subjects a Right to maintain whatſoever Models, or Forms of Government, God hath been pleaſed to eſtabliſh among them, when they are in danger to be altered, or invaded, either by a Domeſtick Tyranny, or Foreign Force. And without this Right of Reſiſtance, for you to tell us, *That Jeſus Chriſt hath given* very good *Laws, and threatned thoſe that break them* with eternal *Puniſhments; and that as* the *Laws, and Religion of our* Saviour *prevail, that ſo the Government of* the *World will mend without any more ado*; is altogether as reaſonable, as to preach, that becauſe Chriſt hath given us good Laws, and threatens everlaſting Puniſhments to thoſe that break them, therefore they are ſufficient to keep Men from robbing and murdering their Neighbours; and that all Men giving up their Natural Rights of reſiſting ſuch Robbers, and defending themſelves againſt them, ſhould wholly rely upon the Efficacy of the Commandment againſt Stealing, or elſe on the more powerful Motive with ſuch People, of a Judge, and a Gallows, ſhould let them do with us what they pleaſe, whenever we fall under their Power: And therefore, I deſire you would give me ſome better Proofs, that our Saviour hath enjoined all Mankind an abſolute Subjection to the Supreme Powers under pain of Damnation, without any Reſiſtance in any Caſe whatſoever: But I pray pardon this Digreſſion, which your own long Preface extorted from me.

M. I ſhall not further diſpute this matter with you; and therefore to obſerve your Commands, I ſhall begin with that Divine Anſwer of our Saviour to the *Phariſees* and *Herodians*, when they conſulted together to entangle him in his Talk. They came to him with great Ceremony and Addreſs, ſaying, *Maſter, we know that thou art true, and teacheſt the Way of God in Truth, neither careſt thou for any Man; for thou regardeſt not the Perſon of Men. Tell us therefore, what thinkeſt thou?* *S. C. R. p.* 49. *Matth.* 22. 15, &c.

It

Is it lawful to give Tribute to *Cæsar*, or not? They thought it impossible that he should give any Answer to this, which would not make him obnoxious either to the *Roman* Emperors, if he denied that the *Jews* might lawfully pay Tribute to *Cæsar*, or to the *Pharisees*, and People, if he affirmed that they might; for there was a very potent Faction among them, who thought it unlawful for the *Jews* to own the Authority, or Usurpations of any Foreign Prince, or to pay Tribute to him as to their King, they being expresly forbidden by the Law, *to set a Stranger over them for their King*, who was not their Brother, that is, who was not a natural *Jew*. And it seems they could not distinguish between their own voluntary Act in chusing a Stranger for their King (which was indeed forbid by their Law) and their submitting to a Foreign Prince, when they were conquered by him. Our Saviour, who knew their wicked Intention in all this, that they did not come with an honest Design to be instructed in their Duty, but to seek an Advantage against him, expresses some Indignation at it, *Why tempt ye me, ye Hypocrites?* But yet to return them an Answer to their Question, he bids them shew him the Tribute Money, that is, the Money in which they us'd to pay Tribute, and enquired, whose Image and Superscription it had. For Coining of Money was then as certain a Mark of Soveraignty, as making Laws, or the Power of the Sword. Well, they acknowledge that the Image and Superscription on the Tribute Money was *Cæsar's*; upon which, he replies, *Render therefore unto* Cæsar, *the things that are* Cæsar's; *and unto God, the things that are God's*. The plain meaning of which Answer is this; that since by the very Impression on their Money, it is evident, that *Cæsar* is the Soveraign Lord, they must render unto him all the Rights of Soveraignty; among which, Tribute is one, as St. *Paul* tells us: *Render therefore unto all their Dues, Tribute to whom Tribute is due, Custom to whom Custom, Fear to whom Fear, Honour to whom Honour*. Whatever then is due to Soveraign Princes, and doth not interfere with their Duty to God, that they must give to *Cæsar*, who at this time was their Soveraign.

Deut. 17. 15. *Ib. p.* 50. *Ib. p.* 51. *Rom.* 13. 7.

And though our Saviour commands us, only in general, *to render to* Cæsar *the things that are* Cæsar's, without telling us, what *Cæsar's* things are; this is so far from making his Answer ambiguous, and of no use in this present Controversy, that it suggests to us three plain and natural Consequences, which are sufficient to end this whole Dispute. *First*, That our Saviour did not intend to make any Alteration in the Rights of Soveraignty; but what Rights he found Soveraign Princes possess'd of, he leaves them in the quiet Possession of; for had he intended to make any Change in this matter, he would not have given such a general Rule, *to render to* Cæsar *the things that are* Cæsar's, without specifying what these things are. *Secondly*, And therefore he leaves them to the known Laws of the Empire, to determine what is *Cæsar's* Right; that is, whatever is essential to the Notion of Soveraign Power, whatever the Laws and Customs of Nations determine to be *Cæsar's* Right, that they must render to him; for he would make no alteration in this matter. So that Subjection to Princes, and Non-resistance, is as plainly determin'd by our Saviour in this Law of paying Tribute; for Subjection, and Non-resistance, are as essential a Right of Soveraign Power, and as inseparable from the Notion of it, as any thing can be; and so it is acknowledged by the Laws and Customs of Nations, and is so determin'd by the Apostle St. *Paul*, as I shall shew hereafter. *Thirdly*, I observe farther, that when our Saviour joins our Duty to our Prince with our Duty to our God, *Render to* Cæsar *the things that are* Cæsar's, *and to God the things that are God's*, he excepts nothing from *Cæsar's* Right, which by the Laws of Nations is due to Soveraign Princes, but what is a Violation of, and an Encroachment on God's Right and Soveraignty; that is, we must pay all that Obedience and Subjection to Princes, which is consistent with our Duty to God. This is the only Limit our Saviour sets to our Duty to Princes. This, I hope, is sufficient for the Explication of our Saviour's Answer to the *Pharisees* and *Herodians*, which evidently contains the Doctrine of Obedience and Subjection to Princes, enforc'd on us by the Authority of our Saviour himself.

S. C. R. p. 56. *Ib. p.* 57.

F. I shall not dispute, that this Instance of our Saviour did enjoin the *Jews* to pay Tribute, and render all those Rights and Dues to *Cæsar*, as the Supreme Power, which are necessary to its Essence: But you seem to me to stretch this Prerogative a great deal too far, when you thus suppose an absolute Subjection to Princes,

Princes, without any Reſiſtance, to be as plainly enjoin'd by our Saviour in this Law, as paying Tribute. For the Reaſon you give for it, *viz. that Subjection, and Non-reſiſtance, are as eſſential a Right of Soveraign Power, and as inſeparable from the Notion of it, as any can be, and that it is ſo acknowledged by the Laws and Cuſtoms of Nations,* is the thing which I deny, and which having been the Subject of our laſt Converſation, is ſtill to be prov'd: And I think I have there ſufficiently prov'd, that abſolute Non-reſiſtance is no eſſential Right of Soveraign Power, nor inſeparable from the Notion of it: Since by aſſerting it, no juſt Right of Soveraign Power will be thereby deſtroyed, or taken away, but rather confirm'd. And that I may make it out yet plainer by a familiar Inſtance: A General of an Army hath an abſolute Power over the Lives of his Soldiers that tranſgreſs his Rules of War, or Military Diſcipline: But ſuppoſe that in a mad or drunken Fit he ſhould command ſome Troops of his Guards to cut the Throats of all the reſt of the Army, and they ſhould be ſuch obedient Coxcombs as to go about to put this Order in Execution, doth it therefore derogate from the Abſoluteneſs of his Power as General, if the Army will not ſtand ſtill, and let three or four hundred Fellows take away all their Lives? But that this Principle of *Paſſive Obedience* in your Senſe, of ſuffering Princes, or other Supreme Powers, to deſtroy or enſlave them, is ſo far from being acknowledged by the Laws and Cuſtoms of all Nations, that, as I think I have proved it to be contrary to the Laws of Nature and Reaſon; ſo I doubt not but I can much eaſier make it out by the Laws and Cuſtoms of all Nations, as well barbarous as civiliz'd, to be both unreaſonable and impracticable. And that it is otherwiſe determin'd by St. *Paul*, I deſire you to prove to me, when you come to make uſe of the 13th to the *Romans*, ſo much inſiſted upon by thoſe of your Opinion.

But before I make an end with this Text we are now upon, I cannot but take notice of your laſt Aſſertion, *That by rendring to* Cæſar *the things which are* Cæſar's, *God excepts nothing from* Cæſar's *Right, which by the Laws of Nations is due to Soveraign Princes, but what is a Violation of, and Encroachment on God's Right and Soveraignty; that is, we muſt pay all that Obedience and Subjection to Princes, which is conſiſtent with our Duty to God. Now if this be the only Limit that our Saviour ſets to our Duty to Princes (as you ſuppoſe) I wonder by what Law the Learned Doctor, from whom you borrow this Principle, as alſo thoſe other Clergymen of the Church of* England, *could juſtify their refuſing to read the King's late Proclamation of Indulgence, or Toleration: For if the King (as they own in the Oath of Supremacy) is the only Supreme Governor of his Dominions, in all Things, or Cauſes whatſoever*; he muſt likewiſe be the *Cæſar* here meant in this Text; and conſequently an Active, not Paſſive Obedience, ought to have been paid to this Declaration. Since you ſay, that Obedience is by the Law of Nations due to Soveraign Princes, to whom we muſt pay all that Obedience and Subjection which is conſiſtent with our Duty to God; and I hope you will not ſay, that this Declaration was inconſiſtent with that Duty, or was any Violation or Encroachment upon God's Rights of Soveraignty.

M. As for your laſt Obſervation upon thoſe Clergymen who refuſed to read the Declaration, I muſt confeſs, I have, according to my Civil Law Maxims, no Excuſe ready for them; ſince with us it is always true, in this as well as other abſolute Monarchies, *Quicquid Regi placuit, Legis habet Vigorem.* Much leſs can I reconcile it with that unbounded Supremacy which the Oath of Allegiance, as alſo the Opinions of moſt modern Judges, have placed in the King in all Eccleſiaſtical Matters: But indeed, I can leaſt of all reconcile it with this Aſſertion you now mention; which, I confeſs, I have taken from divers Sermons and Treatiſes, that have been Preach'd and Printed of late by our City Divines; to whom I ſhall leave it to anſwer this Objection. But to proceed with the Deſign in hand, I ſhall *S. C. R. p.* 57. come in the next place to prove an abſolute Subjection, without Reſiſtance, to be due to the Soveraign Power, from our Saviour's Rebuke to St. *Peter*, when he drew his Sword, and ſtruck a Servant of the High-Prieſt, and ſmote off his Ear; which is as plain a Declaration againſt Reſiſtance, as Words can make it: *Then* *Mat.* 26. 52. *ſaid Jeſus unto him, put up thy Sword unto his place; for all they that take the Sword, ſhall periſh by the Sword.* For the underſtanding of which, we muſt conſider upon what occaſion St. *Peter* drew his Sword; for we muſt not think that our Saviour doth abſolutely forbid the uſe of the Sword; which is to deſtroy all Civil Governments, *Ib. p.* 58. and the Power of Princes, and to proclaim Impunity to all the Villanies that

are committed in the World. The Sword is neceſſary to puniſh Wickedneſs, and to protect the Innocent: Even in the Hands of Princes it is an Inſtrument of Juſtice, as St. *Paul* tells us: That they bear not the Sword in vain; *but are the Miniſters of God, Revengers to execute Wrath upon him that doth Evil.* In the Hands of private Perſons it may be lawfully uſed in Self-defence: Thus our Saviour, a little before his Crucifixion, gave Commiſſion to his Diſciples to furniſh themſelves with Swords, though they parted with their Garments for the Purchaſe. Which we ſuppoſe was not deſigned as a meer modiſh, and faſhionable thing, but to defend themſelves from the private Aſſaults of Robbers, and ſuch like common Enemies, who, as *Joſephus* tells us, were very numerous at that time: *For no Man wanteth Authority to defend his Life againſt him, who hath no Authority to take it away.*

Rom. 13. 4.

Luke 22. 36.

Ibid. p. 59.

But the Caſe of St. *Peter* was very different: He drew his Sword indeed in his Maſter's Defence, but againſt a lawful Authority. The Officers of the Chief Prieſts and *Phariſees*, came with *Judas* to the Place where Jeſus was, to ſeize on him. This was a lawful Authority, tho' employed upon a very unjuſt Errand; but Authority muſt not be reſiſted, tho' in defence of the greateſt Innocence. Men who draw their Swords againſt lawful Powers, ſhall periſh with the Sword; which doth not ſignify what the Event ſhall always be, but what is the Deſert and Merit of the Action. Rebels may ſometimes be proſperous, but they always deſerve Puniſhment; and if they eſcape the Sword in this World, St. *Paul* tells us, they ſhall receive Damnation in the next. What can be ſaid more expreſly againſt Reſiſtance than this? St. *Peter* never could have drawn his Sword in a better Cauſe, never in the Defence of a more ſacred Perſon: If we may defend oppreſſed Innocence againſt a lawful Authority, if we may oppoſe unjuſt and illegal Violence, if any Obligations of Friendſhip, Gratitude, or Religion itſelf, could juſtify Reſiſtance, St. *Peter* had not met with this Rebuke. But though it was a very unjuſt Action, yet it was done by a juſt Authority; and lawful Powers muſt not be reſiſted, though it were in defence of the Saviour of the World: And if St. *Peter* might not uſe the Sword in defence of Chriſt's Perſon, there is much leſs pretence to fight for his Religion; for though ſome call this fighting for Religion, it is only fighting for themſelves. Men may keep their Religion if they pleaſe, in deſpite of earthly Powers; and therefore no Powers can hurt Religion, though they may perſecute the Profeſſors of it: And therefore when Men take up Arms to avoid Perſecution, it is not in defence of Religion, but of themſelves; that is, to avoid their ſuffering for Religion. And if St. *Peter* might not fight to preſerve Chriſt himſelf, certainly neither he, nor we, ought to take up Arms to defend ourſelves from Perſecution. Chriſt was the firſt Martyr for his own Religion; his Perſon was infinitely more ſacred and inviolable, than any one of us can pretend to be. And if St. *Peter* muſt not fight for Chriſt, certainly we muſt not fight for ourſelves, though we abſurdly enough call it fighting for our Religion. And who were theſe Powers St. *Peter* reſiſted? They were only the Servants and Officers of the High-Prieſt. The High-Prieſt did not appear there himſelf, much leſs *Pilate*, much leſs *Cæſar*; and yet our Saviour rebukes St. *Peter* for reſiſting the inferior Officers, though they offered the moſt unjuſt and illegal Violence. It ſeems he did not underſtand our modern Diſtinctions between the Perſon, and the Authority of the Prince; that though his Perſon be ſacred, and muſt not be touched, yet his Miniſters, who act by his Authority, may be oppos'd. We may fight his Navies, and demoliſh his Garriſons, and kill his Subjects, who fight for him, though we muſt not touch his Perſon. But he is a mock Prince, whoſe Authority is confin'd to his own Perſon, who can do nothing more than what he can do with his two Hands; which cannot anſwer the ends of Government. A Prince is not meerly a Natural, but a Political Perſon, and his Perſonal Authority reaches as far as his Commiſſion doth. His Officers and Miniſters of State, and Commanders and Soldiers, are his Ends, and Eyes, and Ears, and Legs; and he who reſiſteth thoſe who act by his Commiſſion, may as properly be ſaid to reſiſt the Perſonal Authority of the Prince, as if he himſelf were preſent in his Natural Perſon, as well as by his Authority. Thus our Saviour it ſeems thought, when he rebuk'd St. *Peter* for ſtriking a Servant of the High Prieſt, and ſmiting off his Ear.

Ib. p. 59, 60.

Ib. p. 62.

F. In answer to this Place, which you have now brought to prove, that the *Resistance* that St. *Peter* would have made on our Saviour's behalf, was absolutely unlawful, I shall not insist, as some do, that Christ came into the World on purpose to be a Sacrifice for Sin, and that therefore it was inconsistent with his Design, and the Person he undertook, to resist and oppose, had it been never so lawful to resist: Tho' our Saviour himself, by the Words which St. *John* relates him to have spoken to St. *Peter*, seems to favour this Interpretation, when, after he had bid him put his Sword into the Scabbard, he adds, *The Cup which my Father hath given me, shall I not drink it?* And so likewise the Answer he gave *Pilate*, who asked him whether he was a King? *Thou sayest that I am a King; to this end was I born, and for this cause came I into the World, that I should bear witness unto the Truth.* Nor yet shall I go about to interpret these Words, *For they that take the Sword shall perish by the Sword*, in that Sense which *Grotius* puts upon it, tho' quite different from yours, as if it were not designed as a Rebuke to St. *Peter*, but for the Encouragement of his Disciples, and being indeed a Prophecy, that the *Jews*, who now came against him with Swords and Staves, should perish by the Sword of the *Romans*, who should be the Avengers of Christ's Death: But I shall take it in the same Sense as you do, as a Rebuke to St. *Peter*, for going about to resist a lawful Authority, tho' employ'd upon a very unjust Errand. Yet will it not prove that the *Supreme Powers* may not be resisted in any case, or by any Person whatsoever, let them use their Power never so cruelly or tyrannically against their Subjects. I grant indeed, it proves what I have never denied, that a private Person, tho' innocent, ought not to resist the Civil Officers that come to seize him, for a Crime whereof he is accused before a lawful Authority; for this is not only unlawful by the Command of Christ, but also by the Law of Nature and Nations. For in *England* it is not only *penal* for a Man to resist the Officers of Justice that come to seize him, tho' he be innocent of the Crime whereof he is accus'd, but also to withdraw himself from Justice by flight. And tho' upon Trial he be found innocent, yet if he fled for the same, he shall forfeit all his Goods, and that very justly, because no Man ought to suspect the publick Justice, or to withdraw himself from the Trial of the Laws. Now to apply this to the Case of our Saviour, tho' the Action which these Priests and Soldiers came about was in it self unjust; yet was it not so either in respect of these Officers themselves, who acted by a lawful Authority; nor yet was it unjust or unlawful in respect of the High Priest and Sanhedrim, who sent them: For since it belong'd to them alone to judge of a *Prophet*, who they supposed taught contrary to the Law of *Moses*, since they did believe our Saviour to be such a Prophet, it was in respect of them neither unjust nor unlawful to seize him, and bring him before them, to give an account of his Doctrine: And they might likewise do this either by day or by night, with the help of more or fewer Men, according as they should think fit; since they feared the People might rescue him; especially since they look'd upon him as one who went about to make himself King of the *Jews*, in opposition to *Cæsar*; and therefore whilst they lay under this Mistake, they were under as high an Obligation, as an erroneous Conscience could lay upon them, of seizing him, and bringing him before the High Priest and the Governor. For if they had believed him to be the true *Messiah*, and consequently the King of their Nation, it had been impossible that they should ever have gone about to put him to Death. Which likewise our Saviour himself acknowledges, when praying for them that crucified him, he said, *Father, forgive them, for they know not what they do.*

John 18. 11.

John 18. 37.

Luke 23. 34.

I speak not this to excuse the Priests, or *Sanhedrim*, for condemning our Saviour to Death, or for using all the Power they had with *Pilate* to have him executed; since I grant their Ignorance being in great part wilful, at least not invincible, they had no just Excuse not to believe in him, after so many Miracles he had wrought in the sight of all the World: But only to prove that which I suppose you will not deny, that Magistrates, even whilst they act unjustly, are not to be resisted in the Execution of publick Justice; no, not to rescue an innocent Man by force from the Hand of Justice, after he is condemned: Since the false or unjust Sentences of Judges against particular Persons are to be taken for just in common acceptation, till they be repealed; according to that Maxim in your Civil Law, *Prætor, dum iniquum decernit, jus dicit.* And therefore our Saviour coming to fulfil all Righteousness, and to be the exact Pattern of Divine and Moral Actions, could not do less than rebuke St. *Peter*, for making use of the Sword

againſt a lawful Authority. But what is this to the Caſes that I have put of the *Reſiſtance* of whole Nations, or great Bodies of Men, againſt an unjuſt Force and and deſtructive Violence upon their Perſons and Eſtates, by thoſe who pretend to act as the *Supreme Powers*, tho' contrary to all Laws *natural* and *divine*, and who have no Pretence to act as they do, but only their unjuſt and arbitrary Wills back'd by Power. And that there is a great difference in theſe two, I will clearly ſhew you, from your own Conceſſion, *that no Man wanteth Authority to defend his Life againſt him that hath no Authority to take it away*; and therefore I ſuppoſe St. *Paul* might, only with the help of thoſe that were with him, not only have defended his Life againſt thoſe whom we find (in the 25th of the *Acts*) were by Order of the High-Prieſt, and Chief of the *Jews*, to have lain in wait to kill *Paul* by the way, but alſo againſt any that *Feſtus* the Governor himſelf ſhould have ſent for the ſame end: Since he there declares, *That it is not the Manner* (*i.e.* Law) *of the* Romans, *to deliver any Man to die before that he that is accuſed have the Accuſers face to face, and have licence to anſwer for himſelf concerning the Crime laid againſt him.* And therefore as *Caſar* could give *Feſtus* no Commiſſion to murder Men, ſo neither did God beſtow on the Emperor any Authority to commit Murder, or to authorize others to do it. And if a ſingle Perſon might do this, certainly much more a whole Nation, Country, or City, may juſtify ſuch a *Reſiſtance*, where their Lives, Liberties and Eſtates lie at ſtake, from the Violence or Tyranny of the *Supreme Powers*; and therefore I do not ſee, but that I may very well grant the Inſtance you have put to be concluſive againſt this *Reſiſtance* made by St. *Peter* on our Saviour's behalf: So that it doth not reach the Caſe in hand, that all Reſiſtance of *Supreme Powers* is unlawful. So that unleſs Princes and their inferior Officers receive Authority from God to commit Murders, every Man may defend himſelf againſt them, when they go about to take away their Lives by Violence contrary to Law. And therefore I ſee no Reaſon, from any thing that you have hitherto ſaid, to believe that Chriſt did not allow this Diſtinction, between the *Perſon* and *Authority* of the Prince, to be good in ſome Caſes; or, tho' his Perſon ſhould be ſacred, yet that his Miniſters, who act not by his Regal Authority, but his Perſonal and Tyrannical Will, may be oppoſed. Nor can I find any Conſequence from what you ſay, *That he is a mock Prince whoſe Authority is confined to his own Perſon, who can do nothing more than what he can do with his own Hands*; ſince no Man in his Wits aſſerts any ſuch thing: For I grant, that an *Abſolute Prince* hath Power to make Laws, and to command them to be put in execution, which do not contradict the Laws of God and Nature; and a *Limited Prince* hath likewiſe a Right to command in all things, that do not expreſly contradict God's Natural and Revealed Laws, and alſo thoſe Poſitive Laws of his Country (which he is not the ſole Maker of) that do not contradict the former: And if he can do this, I think he is endued with an Authority ſufficient to anſwer all the Ends of Government, without ſuppoſing that he muſt needs have an irreſiſtible Power (and without which he cannot anſwer thoſe Ends) to murder and enſlave whomſoever he will. I grant indeed, a Prince is not meerly a Natural, but a Political Perſon; but certainly his Perſonal Authority, as King, doth not reach as far as his Commiſſion, or that he who reſiſts thoſe who act by his Commiſſion, may be ſaid in all Caſes to reſiſt his Regal Authority: Since at this rate the poor Proteſtants in *Ireland*, at the beginning of the laſt *Iriſh* Rebellion, had been in a very woeful Condition, if it had happen'd (which was not impoſſible) that King *Charles* the Firſt ſhould really have granted a Commiſſion to Sir *Phelim Oneal* to deſtroy them; which no Man could then certainly tell but that he had, ſince Sir *Phelim* publickly ſhewed ſuch a Commiſſion, and ſtill aſſerted the Truth of it, till he came upon the Gallows. But this is only by the by, and in anſwer to what you have now ſaid to this matter. So that there is no need of ſuppoſing what our Saviour intended one way or other in this matter; ſince he did not rebuke St. *Peter* for reſiſting the inferior Officers, becauſe they offered an unjuſt and illegal Violence; but becauſe he reſiſted thoſe who acted by a true and legal Commiſſion from the High-Prieſt and *Sanhedrim*, who ſuppoſed our Saviour to be a falſe Prophet.

Acts 21.

Acts 25. 16.

M. If this Diſtinction of yours were true, it would render the Example of Chriſt's Suffering, in obedience to the *Supreme Powers*, tho' unjuſtly, yet without *Reſiſtance*, of no effect to us; whereas I am firmly perſuaded, that Chriſt took ſuch a mean and ſuffering a Perſon upon him, becauſe it was moſt agreeable to the Religion which he preach'd, and of which he was to be an Example; and there-

S. C. R. p. 81.

fore,

fore, tho' Christ suffered for other Reasons, and to other Ends and Purposes than we do or can suffer, yet his Sufferings are an Example to us, because God chose to save and redeem us by the Sufferings of his Son, not only that he might expiate our Sins by his Blood, but also that he might be an Example to us of Meekness, and Patience, and Submission to the Divine Will, and Subjection to Government, even in the most unjust and infamous Sufferings. We may consider farther, that Christ's Sufferings, in obedience to the Will and Appointment of God, do not make him unfit to be our Example: For tho' God has not so peremptorily decreed that all Christians should suffer, as he did that Christ should suffer; yet whenever we are called to it (as we always are, when we cannot avoid suffering without *resisting a lawful Authority*) our Sufferings are as much the Effects of God's Decree and Appointment, as the Sufferings of Christ were; and in such Cases every Christian may and ought to say, as his Lord did, *The Cup which my Father hath given me, shall I not drink it?* *Ib.* p. 82.

Thus St. *Peter* expressly tells the Christians to whom he wrote, and gives it as a Reason why they should suffer patiently, even for doing well; *For even hereunto were you called, because Christ also suffered for us, leaving us an Example, that we should follow his steps.* Now *calling*, in the New Testament, signifies the Choice and Election of God, and always supposes a Divine Decree, Appointment, and Constitution, as the Foundation of it. Thus St. *Paul* tells us, that the *Gifts* and *Calling* (κλῆσις) of God are without Repentance; that is, that Decree he made to chuse the Posterity of *Abraham* for his People, which still entitled all those of them to the Blessings of the Gospel, who would believe in Christ. Thus the State of Christianity is our *Calling*, and *Holy Calling*, because it is the Way and Means God hath chosen and appointed for the Salvation of Mankind: And Christians are often stiled *the Called*, because God has now decreed to chuse all the sincere Disciples of Christ, as he formerly did the Posterity of *Abraham*, to be his peculiar People; and throughout the Scriptures of the New Testament, God is never said *to call*, nor any one *to be called of God*, but with respect to some Divine Decree and Constitution. And therefore when St. *Peter* tells the Christians, that they are *called* to suffer, it signifies that God hath appointed them to it by his positive Will and Decree. 1 *Pet.* 2. 21. *Rom.* 11. 29. *Ib.* p. 83. 2 *Tim.* 1. 9. *Heb.* 3. 1.

This St. *Paul* discourses more at large in his Epistle to the *Romans*, and comforts them under their Sufferings, from this very Consideration: That the Sufferings which they underwent were not the Effects of meer Chance and Accident, nor of the Wickedness and Injustice of Men, nor barely of God's Permission, but of his Decree and Appointment; and therefore they might certainly conclude, that whatever their Sufferings were, they should turn to their good. *And we know, that all things work together for good to them that love God, to them that are called according to his purpose:* Those who are called, that is, to suffer (which is the Argument the Apostle is discoursing of) according to his Will and Appointment. And a little after he goes on, and says: And such Persons who are thus appointed, who are thus called by God to suffer, shall be sure to conquer, and to receive the Reward of Conquerors. For thus the Apostle adds: *For whom he did foreknow, he also did predestinate, to be conformed to the Image of his Son, that he might be the first-born amongst many Brethren.* This Conformity to the Image of Christ in this place doth plainly signify a Conformity to him in Sufferings, as is evident from the whole scope of this Place. Some Persons it seems there are, whom God doth predestinate or foreappoint to be conformed to the Sufferings of Christ; for this is not the actual Portion of all Christians, though it is the Condition of our Discipleship. *Rom.* 8. 28, 29, 30. *Ib.* p. 14. *Ib.* p. 85.

So that though God hath not made us Slaves and Vassals to the Humour of every Tyrant, yet all the Afflictions and Sufferings of Christians, especially those which befal them on the account of Religion, are as particularly ordered and determined by God, as the Sufferings of Christ himself were; and therefore there is no difference upon this account between the Sufferings of Christ and the Sufferings of his Disciples; and therefore though Christ came into the World on purpose to suffer, in obedience to the Divine Will, this doth not make him ever the less fit to be an Example to us. Nay, this Obedience to the Will of God, in suffering the hardest things from the most unjust and tyrannical Powers, is an Example to us of the same patient Suffering, and Submission to the Will of God. *Ib.* p. 86.

It is true, none of us in particular can know, that God hath decreed, that we shall suffer such or such things, and from such or such hands, as our Saviour did: *Ib.* p. 87.

But

But yet this we know, that it is God's Will and Pleaſure, that we ſhould patiently endure thoſe Sufferings, which we cannot avoid without Sin; and ſince he hath forbid us by expreſs Laws to reſiſt the Higher Powers, whatever Sufferings cannot be avoided without *Reſiſtance*, it is God's Will and Pleaſure that we ſhould ſubmit to them. And ſince none of theſe Sufferings, which are unavoidable to us, befal us without the particular Decree and Appointment of God, we have reaſon, in imitation of our Great Maſter, to ſubmit to them with the ſame Cheerfulneſs and Self-reſignation as he did.

There is ſomething indeed in the Example of our Saviour, which in our Circumſtances we are not bound to imitate; for he punctually knowing what God's Will and Pleaſure was concerning him, voluntarily choſe that Condition, which he ſo well knew God had allotted for him. He freely choſe a mean and ſervile Fortune, he choſe Suffering and Death; when his Time of offering up himſelf was come, he went up to *Jeruſalem* on purpoſe to die there: But we are not bound to chuſe Poverty, and Diſgrace, and Suffering; we are not bound voluntarily to deliver up our ſelves into the hands of Tyrants and Perſecutors, who thirſt after our Blood. We may and ought to uſe all juſt and honeſt Arts to make our Condition eaſy and comfortable in the World, and to avoid the Rage and Fury of bloody Men, becauſe we cannot tell, that it is the Will and Appointment of
Ib. p. 88, 89. God that we ſhall ſuffer, till our Sufferings are unavoidable; and then when we muſt either ſuffer or ſin, when we muſt either renounce our Religion, or reſiſt the Supreme Powers; we muſt embrace Sufferings and Death, as that Portion which God hath allotted for us.

I ſhall only here obſerve what a mighty Security this is to all good Chriſtians, how abſolute or tyrannical ſoever the Power be under which they live; that they are ſafe in God's hands, and all the Powers of Men and Devils cannot touch them, till God by a poſitive Decree appoints and orders their Sufferings. There could not be greater nor more abſolute Tyrants than the *Roman* Emperors were at this time; and yet they had no Power over the meaneſt Chriſtian, but by an expreſs Commiſſion from Heaven. This is the ſpecial Privilege of the Chriſtian Church above the reſt of Mankind, *that they are God's peculiar Care and Charge*; that he doth not permit any Sufferings or Perſecutions to befal them, but what he himſelf orders and appoints. It is a great Security to the World, that there is no Evil happens to Men but what God permits, and that he permits nothing but what he can over-rule to wiſe and good Ends; but it is a greater Happineſs to have our Condition immediately allotted by God. God may permit a great many Evils to befal us in Anger and Diſpleaſure; but when he takes us into his immediate Protection, and under his own Government, whatever Evils he appoints for us, whoever are the Inſtruments of them, they are certainly for our good. And therefore
Ib. p. 90. there is no ſuch Danger in the Doctrine of *Non-reſiſtance*, as ſome Men imagine: How abſolute ſoever this may be thought to render Princes, ſincere Chriſtians can ſuffer nothing by it, for they ſhall ſuffer nothing more nor leſs than what God appoints for them to ſuffer: But as for the Abſurdity you think you have brought me to, by granting that no Man wants Authority to defend his own Life againſt him who hath no Authority to take it away, that does not extend to *Supreme Powers*; ſince, tho' I grant they have no Authority to take away Mens Lives contrary to Law; yet does it not follow that we may *reſiſt* and *oppoſe* them, if they do. This I abſolutely deny, becauſe God hath expreſly commanded us not to
Ib. p. 190, 191. reſiſt them; and I ſee no Inconſiſtency between theſe two Propoſitions, that a Prince hath no legal Authority to take away Mens Lives againſt Law, and yet that he muſt not be reſiſted when he does ſo; for both the Laws of God and of our Country ſuppoſe theſe two to be very conſiſtent.

F. To anſwer this long Speech of yours, the beſt way may be to ſhew you, firſt, how far I agree with you, and wherein I muſt differ from you; and I will alſo tell you what Reaſons I have for it. In the firſt place I grant, that though our Saviour was indeed the *Meſſias*, and true King of the *Jews*, yet was he not ſuch a *Meſſias* as they expected, nor was he to have a Temporal, but Spiritual Dominion; and therefore would not be ſuch a King, though the *Jews* would have made him ſo. I likewiſe yield, that Chriſt ſubmitted to the moſt unjuſt Sentence, and to the moſt ignominious and painful Death, rather than he would *reſiſt* the *Higher Powers*; though he could eaſily have called for Legions of Angels to his reſcue: As alſo that he rebuked *Peter*, when he drew his Sword in his defence,

and

and tells *Pilate* the Reason why he was so easily apprehended, and without any Resistance or Opposition. *My Kingdom* (said he) *is not of this World: if my Kingdom were of this World, then would my Servants fight, that I should not be delivered to the* Jews; *but now is my Kingdom not from hence.* All which plainly shews, that our Saviour's Subjection was no matter of Force or Constraint, because he wanted Power to *resist*; but it was matter of Choice, that which was most suitable to the Nature of his Kingdom, which was not to be propagated by carnal Weapons, but by Sufferings: Yet though it may not be propagated, sure it may be defended by force, in some cases; as, if we were invaded by a foreign Power, who made War upon the account of Religion; and also in those Kingdoms or Commonwealths, where Christianity or the true Profession of the Gospel is established by Law, and makes a part, not only of the Ecclesiastical, but Civil Constitution of a Nation. In these cases, if those who pretend to the sole Legislative Power (but have it not) should go about to alter the National Religion by force, and put Men to death contrary to the former Laws and Constitutions of that Kingdom, I think such illegal Powers may lawfully be resisted by the People, they having as much Right to the free Exercise and Enjoyment of their establish'd Religion, as they have to their Liberties, Properties, or any other Civil Rights; since by this legal Establishment Religion becomes a part of the Civil Constitution of the Kingdom, and so may be maintained by the same means as other Rights.

2*dly*, I grant, that in all other Cases our Saviour hath so far proposed his Sufferings to us for our Imitation, as we are engaged by our Baptismal Vow to suffer in the same Cause for which he himself suffered, that is, for the bearing witness, *That Jesus is the Christ*, or *true Messias*, and *Son of God*. And this the Apostle calls (speaking of Christ himself) *the witnessing before* Pontius Pilate *a good Confession*. The like I also hold of all such Truths, as are the necessary Consequences of this great Doctrine.

3*dly*, I farther grant, that when God calls any Person to suffer for the Testimony of his Truth, by the Cruelty of those who are the *Supreme Powers* (as the Apostles and Primitive Christians were by a particular Providence) that then those Powers are not to be *resisted*, but patiently submitted to by Christians at this day; whenever it proves necessary for the same great Ends for which Christ at first enjoined it, *viz.* for bearing witness to the Truth of the Gospel, and for the further Propagation thereof by our constant Sufferings and Example, according to that Saying of the Primitive Fathers, *Sanguis Martyrum semen Ecclesiæ*. Yet is not this absolute Submission to the *Supreme Powers*, in Matters of Religion, due by the *Law of Nature*, or that delivered to *Moses*; but (if at all) purely from the express Command or Example of Christ. So that all the difficulty lies in discovering, when we are thus called by our Saviour to suffer and bear witness to the Truth, though with the Loss of our Lives, and all that is dear to us.

And therefore, if I should grant, that whenever we lie under the like Circumstances of giving this Testimony as the Primitive Christians then did, and that it may serve as much for the same Ends design'd thereby by God, we are also under the same Obligations; otherwise I think we are lawfully discharged from it. As for example; suppose the King should, instead of a *Papist*, have turned *Mahometan*, and, to propagate or set up his own abominable Superstition here, should have sent for, from *Turkey* or *Morocco*, a great Army of *Turks* or *Moors*, and by them would force all the Christians in *England* to turn *Mahometans*, by the same Methods of Dragooning Men and seizing their Estates, as the *French* King hath exercised upon his Protestant Subjects; can any reasonable Man believe, that we lie under the same Obligation thus to suffer in a Country where the People are all Christians, as we were if we had happen'd to be converted in a Country where almost all or the greater part of them were *Mahometans* or *Heathens*, and where the *Mahometan* or *Pagan* Religion hath been for many Ages the established Religion of that Nation and Government.

For in our Case, there is no farther occasion to bear witness to the Truth by patient suffering for it; nor yet of propagating it by our Martyrdom; since all the People amongst whom we live are sufficiently convinced of the Truth of it: Nor can it be reasonable that our Saviour should give up whole Nations to be thus destroyed, at the Will of one, or a few Men, only to do that of which there is no need: For then *Jesus Christ* had delivered us up to be meer Slaves and Vassals to the Will and Humour of every wicked Tyrant, (which you seem to

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disapprove) without performing any of those great Ends, for which he at first enjoined this Submission: And tho' I grant that the Afflictions and Sufferings of Christians, on the account of Religion, are as particularly ordered and determined by *God*, as those of *Christ* himself; yet, it is only as they may be subservient to higher Ends, *viz.* the Propagation of his Religion, and the Good and Peace of Mankind; which I think cannot be well promoted by supposing an irresistible Power in the Prince or State, of rooting Christianity quite out of a Nation or Country, after it is settled by Law, and become the National Religion thereof, and of enslaving all the People of it whenever he pleases: And this I take to be the true Bounds and Limits of our Submission to the Supreme Powers in Matters of Religion. But supposing, not granting at present, that *Christ* hath laid any more strict Commands of Submission upon us in those Matters; yet since he came not into the World to put us into a more miserable Condition in other things, than we were before his coming; nor to take away or abridge us of any of those Natural or Civil Rights that we enjoy as Men or Subjects; therefore if the People had a Right before *Christ*, to defend their Lives, Liberties or Properties against the violent Assaults and Oppressions of Princes or States, they have still the same Liberty left entire in all Cases, which remain not excepted by the express Precepts or Example of Christ; since it is a general Rule in all positive Laws, that whatever is not excepted or altered by a subsequent Law, remains the same as it was before in all other Cases, which are not so particularly excepted: And therefore tho' I should grant that it were now unlawful in any Case to resist the Supreme Powers, who persecute or put Men to Death for bearing witness to *Christ*'s true Religion; yet doth it not therefore follow that it were unlawful to resist in any other Case whatsoever, though it were in the defence of our Lives, Liberties or Properties; since such Defence was lawful (as I have already proved) before *Christ*'s coming, and is not expressly forbidden by any Place of Scripture, or Command of *Christ* or his Apostles.

And without the Considerations of these great Ends that *Jesus Christ* had to enjoin his Followers an absolute Submission to the Supreme Powers in some Cases, (tho' not in all) were to suppose, that instead of a merciful Saviour, he had only come into the World to patronize Tyranny, and to render the Condition of Mankind much more miserable than it was under the Law of *Moses*, or in the State of *Nature*; and seems to suppose, that instead of commiserating Men's Sufferings, he only took delight to make them more miserable. Nor will it be any Comfort or Security to *Christians*, when they are once made Slaves under an arbitrary tyrannical Power, *That they are safe in God's Hand, and that all the Powers of Men or Devils cannot touch them, till God by a positive Decree appoint and order their Sufferings:* For if this were a good Argument against all Resistance, it would be so likewise against resisting Pirates or Robbers; since whatever we suffer from them is by God's positive Decree, who thus orders all our Sufferings even from them: And yet I think (since Men are not now to be saved by Miracles) he hath likewise also ordained Resistance as the only humane Means to prevent their Malice and Violence, or escape out of their Hands when we fall under them. Nor are the same Ends unlawful against any other humane Powers, but what God himself hath ordained.

And therefore it is a very crude Assertion, to say, that though there could not be more absolute Tyrants than the *Roman* Emperors, yet that they had no Power against the meanest Christian, but by an express Commission from Heaven; whereas I never knew as yet (and I would be very glad you could shew me) where this express Commission is to be found, whereby Princes, or other Supreme Powers, are authoris'd to persecute, enslave, or take away the Lives of the meanest Christians barely for Matters of Opinion, or Faults that do not immediately concern the publick Quiet and Safety: And as you have talk'd a great deal of the great *Security it is to the World, that no Evil can happen to us but what God permits; and that he permits nothing but what he can over-rule to wise and good Ends; and that God may permit a great many Evils to befal us in his Anger and Displeasure; and that whatever Evils he appoints for us, they are certainly for our good; and that therefore there is no such Danger in the Doctrine of* Non-resistance *as some Men imagine; because sincere Christians can suffer nothing by it, since they shall suffer nothing more or less than what God appoints them to suffer.* All these Arguments might as well be used for not resisting Pirates

or

or Thieves, or not endeavouring to divert or oppose a River that had run beyond its Banks, but to let it go where it lists, to the destruction of a whole Country, because forsooth, *sincere Christians can suffer nothing by it, for they can suffer nothing more or less than God appoints them to suffer*; indeed a wondrous use of Consolation. And therefore, unless you can prove that all Tyranny is ordained by God for our good; and that therefore we are obliged under pain of everlasting Damnation to submit to it; all that you have spoken concerning the Example and Sufferings of *Christ* signifie just nothing; so that I think the Absurdity still lies at your Door; since if *Christ* has not expresly forbidden all Resistance of the unjust Violence of Princes, (as I do not find he has by any of the Texts you have yet brought) *every Man may still defend his Life against him who you grant hath no Authority to take it away*; and as for its being forbidden by the Laws of our Country, I shall answer that when you urge those Laws to me.

M. I hope I shall be able to prove that by and by; but in the mean time give me leave to observe, that it seems very strange to me, that you should own *Christ* hath obliged his Disciples to submit without any Resistance, in some Cases, to the Supreme Powers, when they persecute them and put them to Death for Religion; and that they might not take up Arms in the defence of their Religion, which is the greatest concern that Men ought to have in this World; and yet that they might do it for much less considerable Matters, *viz.* their Lives, Liberties or Estates, which sure ought to be of much less importance than the Glory of God, which is chiefly maintained by his true Worship. But I see you have found a Salvo for this, and will not allow Princes the irresistible Power of Persecution, when the Religion is once settled by Law; that is, when the Christians were strong enough to resist, which certainly would be no thanks at all for their Submission, since Men, who are weak and unable to resist, must needs obey and suffer; which were matter of Force, and not of Duty: Whereas we find by *Tertullian*, and all the Ecclesiastical Historians, that though the Christians were strong and numerous enough in the *Roman* Empire, yet they chose rather to dye than to resist, as I shall shew you more particularly anon, when I come to those Quotations; but I will, if you please, now proceed to the two last Texts I have to cite to you out of St. *Paul* and St. *Peter*.

F. That we may not confound things one with another, I pray give me leave now to answer what you have objected against what I said last, before you proceed to any fresh places of Scripture; for though, in the first place, I doubt whether the *Non-resistance*, which *Tertullian* and other Primitive Fathers so strictly preached up, was founded upon any expres Command of our Saviour or his Apostles; yet granting at present that Christ and his Apostles enjoyn'd it both by their Example and Precept, yet this does not reach the Case now before us; for there may be very good Reasons why our Saviour might enjoyn an absolute Submission to the Supreme Powers without any Resistance, though they persecute us, nay put us to Death, for Matters of Religion; and yet he may allow us greater Liberty for the defence of our *Lives*, *Liberties* and *Estates*, when assaulted by the unjust Violence of the Supreme Powers.

For *First*, Our Saviour ordained his Religion to be suitable to his Person, *viz.* a meek, humble, suffering Messiah, to be an Example of a meek and suffering Religion. *Secondly*, Our Religion is a thing that no Power in the World can take from us; Persecution indeed may increase it and render it more fervent, but can never diminish it, if it be real. And God hath expresly promis'd so great a Reward in another Life for our Sufferings for it in this, that it will infinitely outweigh all that ever we can suffer on that account. And *Lastly*, Our Saviour Christ was pleased to ordain his Doctrine to be propagated by Miracles and Sufferings, to distinguish it from all the false Religions that had been in the World before his, or that should be set up in opposition to it afterwards; since neither the *Pagan* nor *Mahometan* Superstitions, nor yet the *Jewish* Religion, can shew the like; to subsist, nay encrease for above three hundred Years under such great and cruel Persecutions; nor yet is the Glory of God at all diminish'd, but rather increas'd under Persecution, since none are then firm to it, but such as are really persuaded of its Truth, and that they ought to suffer the worst that can befall them, rather than forsake it.

And certainly nothing can tend more to the Glory of God, than to see it subsist and increase under a cruel and bloody Persecution; yet there is not the same reason that we should suffer Persecution after Religion is become the settled Constitution of a Nation; because then every Man hath the same Right to it as he hath to his Property or Freedom; and tho' a Man may part with either the one or the other, yet is he not obliged to give them up by Force, and whether he will or no; so likewise neither that Right which he hath to enjoy his Religion according to the Laws of his Country. And therefore I do not resolve the Obligation to *Non-resistance* in Matters of Religion, into the being the major part in a Kingdom, as you suppose; for if the Government of *England* were Popish, that is, the Legislative part of it, and the major part of the common People were Protestants; perhaps in that Case they were under all the Obligations of enduring Persecution without Resistance, as they were under the Heathen Emperors; but indeed the Primitive Christians were obliged to Non-resistance, because they lived under a Government in which Christianity was forbid, and Paganism established by Law.

And though it is true *Constantine* made several Laws, enjoyning the free Exercise of the Christian Religion, and forbidding the Heathen Sacrifices, and that the Pagan Temples should be shut up; yet was not the Christian Religion, for all that, the sole Religion of the State; the very Senators of *Rome*, and the major part of the common People, continuing Pagans still. So that it seems the Christian Religion was all this while rather established together with Heathenism, than that this was wholly forbid; since all Civil Offices and Preferments were equally conferred upon Pagans as well as Christians, if they deserved them; and therefore it was no hard matter for *Julian* the Apostate to revoke so many of those Edicts his Uncle had made in favour of Christianity, and to abrogate those which had been publish'd against the publick Sacrifices to the Heathen Gods, and shutting up their Temples: So that no wonder if they were now again under the same Obligations to suffer, as they were before *Constantine's* Time; since the Christian Religion was never the only one established by Law, so as to exclude the open Profession of any other, till the Time of *Theodosius*; after which (as also some time before) according as the Christian Religion increas'd, and as they got greater Privileges from the Emperors, so were they more stout and bold in standing up for and defending the just Rights of their Religion, whenever they thought them invaded by the *Arian* or other Heretical Emperors, as I shall shew you by several Instances out of Church History, when we come to it; but you may now, if you please, proceed to the rest of those places of Scripture which you have to produce against this Doctrine of *Resistance* in those Case I have put.

M. I have many things still to object against your last Discourse, but since it grows late, I shall now confine my self to the Doctrine of the Apostles concerning Non-resistance; not as if the Authority and Example of our Saviour were not sufficient of itself to make a Law, but stood in need of the Confirmation and additional Authority of his own Apostles, but we might justly suspect ourselves mistaken in the meaning of our Saviour's Words, or in the intention and design of his Sufferings, had none of his Apostles, who were immediately instructed by himself, and acquainted with the most sacred Mysteries of his Kingdom, ever preached any such Doctrine, as this of absolute Subjection to Princes. And therefore to give you the more abundant Assurance of this, I shall plainly shew you that the Apostles taught the same Doctrine, and imitated the Example of their great Master. I shall begin with St. *Paul*, who hath as fully declared himself in this Matter, as it is possible any Man can do by Words. *Let every Soul be subject unto the higer Powers, for there is no Power but of God, the Powers that be are ordained of God: Whosoever therefore resisteth the Power, resisteth the Ordinance of God, and they that resist shall receive to themselves Damnation.*

S. C. R. p. c. 4. p. 100.

Rom. 13. 1, 2.

This is a very expres Testimony against Resistance, and therefore I shall consider it at large; for there have been various Arts us'd to prevert every Word of it, and to make this Text speak quite contrary to the design and intention of the Apostle in it: And therefore I shall divide the Words into three general Parts. *First*, The Doctrine the Apostle instructs him in; *Let every Soul be subject to the higher Powers.* *Secondly*, The reason whereby he proves and inforces this Doctrine; *For there is no Power but of God; the Powers that be are ordained of God.* *Whoever therefore*

fore reſiſteth the Power reſiſteth the Ordinance of God. The Puniſhment of ſuch Reſiſtance, *and they that reſiſt ſhall receive to themſelves Damnation.* I ſhall begin with the Doctrine, *That every Soul muſt be ſubject to the higher Powers*; and here are three Things to be explained. *Firſt*, Who are contained under this general Expreſſion of *every Soul*. *Secondly*, Who are meant by the *higher Powers*. *Thirdly*, What is meant by being *ſubject*. *Firſt*, Who are contained under this general Expreſſion of *every Soul*; which, by an ordinary Hebraiſm, ſignifies *every Man*: For Man is a compounded Creature of Body and Soul, and either part of him is very often in Scripture put for the whole, ſometimes Fleſh, and ſometimes Soul ſignifies the Man; and when every Soul is oppos'd to the higher Powers, it muſt ſignifie all Men, of what Rank or Condition ſoever they be, who are not inveſted with this higher Power. And again, the deſign of the Apoſtle, as you ſhall hear more particularly by and by, was to forbid all Reſiſtance of Soveraign Princes; and had he known of any Man, or number of Men, who might lawfully reſiſt, he ought not to have expreſs'd it in ſuch general Terms, as to forbid all without Exception. *Ibid.* p. 102.

And therefore I ſhall now a little more cloſely examine your main Argument, or indeed Foundation of all that you have urged for Reſiſtance, *viz.* That tho' it is unlawful for private or particular Men to reſiſt the Supreme Powers; yet that it doth not extend unto the whole or major part of a People or Nation, whenever they are outragiouſly oppreſs'd or aſſaulted by the higher Powers, beyond what they ſuppoſe they are able to bear; whereas the Apoſtle here commands *every Soul to be ſubject*; and therefore if the whole Body of the People be ſubject to God, they muſt alſo be ſubject to the Prince too, becauſe he acts by God's Authority and Commiſſion. Were a Soveraign Prince the People's Creature, that might be a good Maxim, *Rex major ſingulis, ſed minor univerſis, That the King is greater than any particular Subject, but leſs than All together*; but if he be God's Miniſter, he is upon that account as much greater than all as God is. *Ibid.* p. 103.

And that the whole Body of the People altogether, as well as one by one, are equally concern'd in this Command of being ſubject to the higher Powers, is evident from this Conſideration, that nothing leſs than this will ſecure the Peace and Tranquility of humane Societies. The Reſiſtance of ſingle Perſons is more dangerous to themſelves than to the Prince; but a powerful Combination of Rebels is formidable to the moſt puiſſant Monarchs. The greater the number of Subjects that rebel againſt their Prince, the more do they diſtreſs his Government and threaten his Crown and Dignity; and if his Perſon and Authority be ſacred, the greater the Violence is which is offered to him, the greater is the Crime. *Ibid.* p. 104.

Had the Apoſtle exhorted the *Romans* after this manner; "Let no private and "and ſingle Man be ſo fooliſh as to rebel againſt his Prince, who will be too "ſtrong for him; but if you can raiſe ſufficient Forces to oppoſe againſt him, if "you can all conſent to depoſe and murder him, this is a very innocent and juſtifi- "able, nay, and heroical Atchievement, which becomes a Free-born People: How would this have ſecured the Peace and Quiet of the World? How would this agree with what follows, that Princes are advanced by God, and that to reſiſt our Prince is to reſiſt the Ordinance of God, and that ſuch Men ſhall be ſeverely puniſh'd for it in this World or the next? For can the Apoſtle be thought abſolutely to condemn Reſiſtance, if he makes it only unlawful to reſiſt when he want Power to conquer? which yet is all that can be made of it, if by every Soul the Apoſtle means only particular Men, not the united Force and Power of all the Subjects. *Ibid.* p. 104, 105.

Nor can there be any Reaſon aſſign'd why the Apoſtle ſhould lay ſo ſtrict a Command on particular Chriſtians to be ſubject to the higher Powers, which doth not equally concern whole Nations: For if it can ever be lawful for a whole Nation to reſiſt a Prince, it may in the ſame Circumſtances be equally lawful for a particular Man to do it; if a Nation may conſpire againſt a Prince who invades their Rights, their Liberties or their Religion; why may not any Man by the ſame reaſon reſiſt a Prince when his ſingle Rights and Liberties are invaded? It is not ſo ſafe and prudent indeed for a private Man to reſiſt, as for great and powerful Numbers: But this makes Reſiſtance only a Matter of Diſcretion, not of Conſcience. If it be lawful for the whole Body of a Nation to reſiſt in ſuch Caſes, it muſt be equally lawful for a particular Man to do it; but he doth it at his own Peril, *Ibid.* p. 106. *Ibid.* p. 106.

Peril, when he hath only his own ſingle Force to oppoſe againſt his Prince; ſo that our Apoſtle muſt forbid Reſiſtance in all Men or none; for ſingle Perſons do not uſe to reſiſt or rebel, or there is no great danger to the Publick if they do; but the Authority of Princes, and the Security of publick Government, is only endangered by a Combination of Rebels, when the whole Nation, or any conſiderable Part, for Numbers, Power and Intereſt, take Arms againſt their Prince. If Reſiſtance of our Prince be a Sin, it is not the leſs, but the greater Sin, the greater and more formidable the Reſiſtance is; and it would very much unbecome the Gravity and Sacredneſs of an Apoſtolical Precept, to enjoyn Subjection to a few private Chriſtians, who dare not, who cannot reſiſt alone; but to leave a powerful Combination of Rebels at liberty to reſiſt; ſo that *every Soul* muſt ſignifie all Subjects, whether ſingle or united; for whatever is unlawful for every ſingle Perſon, conſidered as a Subject, is unlawful for them all together; for the whole Nation is as much a Subject to the higher Powers as any ſingle Man. Thus I am ſure it is in our Government, where Lords and Commons aſſembled in Parliament own themſelves the Subjects of the King, and have by publick Laws diſclaimed all Power of raiſing any War, either offenſive or defenſive againſt, the King.

Ibid. p. 107.

Let us now conſider what is meant by the Higher Powers, (ἐξουσίαις ὑπερεχούσαις) which ſignifies the Supreme Power in any Nation, in whomſoever it is placed, whether in the King, as in Monarchical Governments, or in the Nobles, as in Ariſtocratical, or in the People, as Democracies. At the time of writing this Epiſtle the Supreme Power was in the *Roman* Emperors; and therefore when St. *Paul* commands the *Roman* Chriſtians to be ſubject to the higher Powers, the plain meaning is, that they ſhould be ſubject to the *Roman* Emperor. And thus St. *Peter* explains it; *Be ſubject to every Ordinance of Man for the Lord's ſake*, whether to the King as Supreme, ὡς ὑπερέχοντι, the Word us'd in this Text, as to him who hath a ſupereminent Power, and is above all others, as alſo unto Governors that are ſent by him, *&c.* From which Text *Epiphanius* proves that ſubordinate Magiſtrates under the King are ordained of God; and therefore that the Power of Under Officers, ſince it is the Ordinance of God, ought no more to be reſiſted than the King's, from whom it is derived.

1 *Pet.* 2. 13.

F. I hope I ſhall not be very tedious in anſwering your long Speech, ſince a ſmall ſhare of natural Reaſon and Grammar will do it; therefore, to be as ſhort as I can, I do freely acknowledge, that not only private Men, but whole Nations, are, by this Precept of St. *Paul*, to be ſubject to the higher Powers, without any Rebellion againſt them, as well as particular Perſons, as far as they are Powers ordained by God. And therefore it is neceſſary that you ſhould conſider what is the true ſignification of the Word ἐξουσία, which if it be once diſcovered, you will find it carries its own limitation along with it; for it excludes both the Uſurpation of the Supreme Power, and alſo the illegal and wicked Exerciſe of it; and of this Opinion is the learned Dr. *Sanderſon* in his Lectures of the Obligation of humane Laws; where, in his fifth Lecture, §. 12. (as I remember) he ſpeaks to this purpoſe, in anſwer to an Objection, *That then all thoſe who have the power of the Sword; that is, of compelling thoſe who are under their Power to perform their Commands, ought then to be obeyed in Conſcience.* His Anſwer is to this purpoſe; "That the "Power he means, and on which alone lies the Obligation of Conſcience, is not that "Power which the *Greeks* call δύναμις, that is, natural or phyſical Power or Force; "or elſe that which is only *de facto*, by which any one is able to do whatever he "pleaſes without any hindrance; but that Power which they call ἐξουσία, that is, "lawful Power, or of Right; to wit, that which belongs to him that hath it by "the Law of Nature, Nations, or Civil Conſtitutions, by reaſon of the Perſon "who bears it, and in reſpect of thoſe who are to be ſubject to it, To this "ἐξουσία, or lawful Authority, the Apoſtle doth now ſo much preſs an exact Obe-"dience, that he names it five times in the ſpace of three Verſes, but ſays not "one word of this δύναμις, or Force. So far he. And if our Tranſlators of this Place had rendered the Word ἐξουσίαι, Authorities, inſtead of Powers, as they have render'd it in other Places, and as they were fain to do in the firſt of *Peter*, ch. 3. ver. 22. where ἐξουσιῶν and δυνάμεων coming together in the ſame Verſe, they render the former Word by Authorities, and the latter by Powers, which if they had conſtantly done, they had effectually prevented the falſe application of this Text; ſince no Man in his Wits can imagine, that when a Prince (for

(for Example) destroys, oppresses and enslaves his Subjects, he acts thus as a lawful Power or Authority; or that belongs to him (as Dr. *Sanderson* very well expresses it) by any natural or municipal Laws; much less can be the ἔσαι ἐξουσίαι, true or just Authorities or Powers which are here meant by St. *Paul* to be ordained by God; and that these Words may be so render'd instead of the Powers that are, appears from *Plato*, who more than once hath ἔσα ἀρχὴ for *vera Potestas*, true Power or Authority. *Vid. Lexicon Scapulæ.*

So that if this Text were to be understood in your Sense, this Place of Scripture would serve to countenance and defend all the Tyranny, Cruelty and Oppression which the most wicked Tyrants can commit; all which must be ordained by God, by vertue of this equivocal Word Power. But that you may the better see the absurdity of this Interpretation, pray let us put these things into the Text instead of Powers, and see how it will run then. There is no Tyranny, Violence or Oppression committed by Princes, or their subordinate Officers, but what is ordained by God. Whosoever therefore resists this Power, resists the Ordinance of God. You'll say, perhaps, that this is not your meaning, yet is it the true Sense that must arise from your Interpretation of this Place; whereas it implies no more than God's approving all just and lawful Governments, and confirming from Heaven those moral Duties of Submission, Obedience and Non-resistance, which were always due, and must ever be, to lawful Authority; that is, such as are agreeable to the Laws of God and Nature, which you plainly see are not due to meer Force, Violence or Cruelty; for that is absolutely excluded out of the Text, which will by no means admit of it: The higher Powers or Authorities ordained by God having no Commission from him for any of these wicked Purposes.

M. I doubt, for all your Confidence, that you very much mistake the sense of these Words; for in the first place your (or rather your Doctor's) Criticism between ἐξουσία and δύναμις, will not do, for they both signifie the same thing in Scripture, either Force and Power, or Authority, οὐκ ἐγὼ ἐξουσιασθήσομαι ὑπὸ τινός; *I will not be brought under the Power of any thing*, 1 Cor. 6. 12. must signifie Force, and δύναμις must signifie Authority and Dignity. Thus *Ephes.* 1. 21. Ὑπεράνω πάσης ἀρχῆς, καὶ ἐξουσίας καὶ δυνάμεως καὶ κυριότητος, which are several Names and Degrees of Dignity and Authority as well as Power. And in the second place you do much more mistake, when you suppose by this Word Powers to be meant only the true or just Exercise of Civil Authority, whereas the αἱ ἐξουσίαι are the οἱ ἐξουσιάζοντες, the Persons themselves who exereise Authority and Dominion, the οἱ ἄρχοντες, the Rulers, *v.* 3. the Ministers of God which bear the Sword, *v.* 4. in St. *Peter*, the Βασιλεὺς and Ἡγεμόνες, the King and his Governors and Magistrates, 1 *Pet*, *c.* 2. *v.* 13, 14, And therefore I must tell you, you do very ill to separate the Power or Authority from the Persons intrusted with it. *S. C. A. p.* 19.

But suppose I should grant you that this Word ἐξουσία doth here signifie the Exercise of Authority, yet doth it not signifie the right and lawful use of this Power, but the Right to exercise this Authority; whether well or ill, 'tis all one, as to the Submission due to it; because no Resistance can be lawful for want of a superior Jurisdiction over it. The truth of this is evident from *John* 19. 10, 11. *Pilate* says to *Jesus*, *knowst thou not that* ἐξουσίαν ἔχω, *I have Power to crucifie thee, and have Power to release thee*; Jesus grants it, and answers, οὐκ εἶχες ἐξουσίαν οὐδεμίαν κατ' ἐμοῦ, εἰ μὴ, &c. *Thou couldest have no Power against me, except it were given thee from above.* And therefore I shall reduce your Argument into the form of a Syllogism, that you may more plainly see the absurdity of it. *U. S. A. S. p.* 133. *Ibid.* 138.

Powers not ordained by God, may be resisted without danger of Damnation.
But Powers exercised tyrannically, are not ordained of God;
Therefore we are not forbidden to resist them.

In this Syllogism the Minor is not true; for though Tyranny be not the Ordinance of God, yet the Power or Authority (of which this Tyranny is but an Abuse) is of divine Institution; for tho' the Supreme Power is commanded to rule justly, yet is it withal enabled to act otherwise: for the good or ill use of it is left indifferent, in respect of the Subjects Subjection, though not of the Magistrates commanding or acting Power: So that the Abuse of this Power doth not make void the Authority, though acting contrary to the Laws of God or Nature. The Obligation not to resist the Supreme Powers receiving not any Validity from their

Justice,

Juſtice, nor is it weakened or annulled by their Violence or Injuſtice. *Saul* was God's Anointed, and *Pilate* had his Authority from above, notwithſtanding their high Abuſe of it.

So that upon the whole matter, I incline to believe, that the Reaſon which made St. *Paul* call the Magiſtrates by the *abſtract Powers*, was this: He wrote to Chriſtians living in the *Roman* Empire; and it was the Cuſtom of the *Latin* Tongue to call Perſons endued with Power, *Poteſtates*. You may obſerve it in *Ulpian, L. quid ſit. D. de Ædil. edict.* § 19. And in *Auguſtin, Epiſt.* 48. who ſays, *Sive Poteſtas veritati favens aliquem corrigat, laudem habet ex illo qui fuerit emendatus, ſive inimica veritati in aliquem ſæviat, laudem habet ex illo qui fuerit coronatus*; and mark that, *Poteſtas inimica veritati*, muſt needs ſignify a Man abuſing his Authority. And in *Juvenal* we read, *An Fidenarum Gabiorumque eſſe Poteſtas.* And in *Suetonius, Juriſdictionem de fidei commiſſis quotannis, & tantum in urbe deligari Magiſtratibus ſolitam, in perpetuum atque etiam per Provincias Poteſtatibus delegavit.* The modern Languages, *Italian* and *French*, which were bred out of the *Latin*, retain this antient way of ſpeaking; for *Poteſtat* in old *French*, and *Podeſta* in *Italian*, expreſs not the Function only, but the Perſon who manages it. Thus antiently the *Latin* Word for the *Chief-Juſtice*, was *Juſtitia*, as you may find in *Glanvil, lib.* 2. *cap.* 6. and *Roger Hoveden's* Annals; ſo our King is called in the Abſtract, *Majeſty*, as the *Grecian* Emperors, ἀγία βασιλεία.

Ib. p. 133.

Many dangerous Conſequences flow from thence; but I deſire not to make Sport with that unhappy Diſtinction which had almoſt ruined as flouriſhing, and ſtrongly temper'd a Kingdom as any in the Chriſtian World. It expoſes Magiſtrates, and all in Authority, to the Contempt and Injuries of the baſeſt ſort of People; for when diſcontented it is very obvious for them to tell them; though Reverence is due to their Function, yet, that ſetting their Office aſide, they will take the Liberty only to correct their Perſons; and that the Magiſtrate is not at all affronted, though the Man be ſoundly beaten. Indeed, it is againſt common Senſe to put ſuch a difference between the Perſon and the Authority of Kings; for if it were real, neither God, nor the Laws of the Land have made any Proviſion for the King's Safety; for his Authority is not capable of receiving any Benefit; and therefore it muſt be acknowledged by all ſober and reaſonable Men, that this Authority doth but convey ſuch and ſuch Priviledges upon the Perſon who only can be ſenſible of them; and conſequently whatever is attempted againſt his Perſon, is attempted againſt his Authority likewiſe.

F. I doubt you will have no better Luck in Criticiſms than my ſelf, and that they will do your Cauſe as little good: For if there be no difference in the Scripture between ἐξουσία and δύναμις, as you affirm; and that both of them ſignify, not the Authority alone, but the Perſons endued with it, and that they are all from God; then *Tyrants* and *Uſurpers* are ordained likewiſe by *God*, and conſequently *Oliver Cromwell* was as much the *Ordinance of God*, as King *Charles*; and if this be your Doctrine, much good may it do you. But pray keep it to your ſelf, leſt if your Friends the *Old Cavaliers* come to know it, they will quite baniſh you their Company: Beſides, I can ſhew you other Conſequences that will follow from it, which I have not now a mind to urge, but may hereafter; for I have no mind to enter into that *troubleſome Debate* any more; for I told you enough of my Mind concerning it the laſt time we met ſave one.

But ſince you will needs have theſe ἐξουσίαι, not to ſignifie Powers or Authorities, but the Perſons themſelves, you ſhall have your Will for once; only I pray now anſwer me one ſhort Queſtion: When, for Example, *Charles* the ſixth, King of *France*, fell mad, and would have killed his Servants, by what Authority did they diſtinguiſh and ſeparate between his Perſon and his Power? and thought that they might well reſiſt and bind the one without any Diminution to the other. Or by what Right did the *Portugueſe* ſeize and impriſon their late King, and make his Brother Regent in his room, but becauſe the former uſed ſometimes in a Frolick to murder his Subjects out of the Window, or as he met them upon the way; and was beſides found, by reaſon of an incurable Folly, to be utterly uncapable to govern? Pray tell me, did not the Servants and Subjects of theſe Princes then ſeparate the Authority from the Perſon? If not, they muſt have let them alone to have done what they would, the Conſequence of which you may eaſily imagine.

M. Theſe

M. These Instances of the Folly and Madness of Princes are the main things that you Gentlemen of *Commonwealth Principles* have to defend them withal: But to shew you there is a great difference between *mad* or *foolish* Princes and *Tyrants*, who are in their right Wits, I will shew you my Reasons why the one may be bound or resisted, and not the other. In the first place, I suppose you will not deny, but that *Folly* and *Madness* do so far incapacitate the Persons that are under those Misfortunes, that they hinder them from acting like rational Men, much more from performing any of the Functions of *Civil Government*. In the next place, they ought to be restrained for the *Common Good* of their People, as well as themselves, lest they should not only murder and hurt their Subjects, but themselves too. And lastly, because it is the highest Courtesy and Benefit that can be done such mad, or foolish Princes, to *shut them up close*, and hinder them from exposing their Folly and Madness, and rendring themselves ridiculous to the World: Whereas a *Tyrant*, whom I suppose in his right Wits, though he never so much *enslaves* or *oppresses* his People, yet Civil Government may be well enough carried on and maintain'd under his personal Conduct; and as long as he hath Wit and Sense enough to govern, he is so long to be *obeyed* as the *Ordinance of God*, without any Resistance whatsoever.

F. But this much I suppose you will not deny, but that this Power of resisting, and shutting up mad or foolish Princes, is wholly exercised by the Law of Nature; since I never heard of any Civil or Municipal Law that made Provision for it.

M. I shall not much dispute that with you; it may be so; but what do you infer from thence?

F. Why, no more than this, that if I can prove to you, that there is no such great difference between *Mad-men* and *Fools*, and habitual incurable *Tyrants* (as you imagine); there is a like Right in the People by the Law of Nature to resist and defend themselves against the one as the other; and therefore I will examine each of your three Reasons one after another, and see whether they may not as well be applied to such *Tyrants*, whom alone I suppose may be resisted, as to *Mad-men* or *Fools*; and if they do, I suppose you will not deny the Consequence. Your first Reason is, that Folly and Madness do so far incapacitate their Reasons that are under these Misfortunes, that they hinder them from acting like rational Men, much more from performing any of the Functions of Civil Government. Now pray tell me, doth not Anger, Lust, Pride, Cruelty, Wilfulness, Ambition, and unreasonable Self-love, which are the Passions and Vices which disturb the Souls of *Tyrants*, and make them take a delight to enslave, destroy and oppress their Subjects, as much incapacitate their Reasons for performing these Functions of Civil Governments, as Folly and Madness themselves? And I think I have already proved, that when Princes bring things to this pass, they do as much deserve *Tutors* or *Guardians* to keep them from doing Mischief, and to manage their Kingdoms for them, as the most mad or foolish Prince we have read of in History. But the Mischief of it is, that such *Tyrants*, not being mad enough to be shut up like Mad-men or Fools, nor yet having Judgment, or good Nature, sufficient to perform the main Ends of Civil Government, by the greatness of the Rewards that they are able to bestow upon their Followers, may soon bring the best Government into a State of War and Confusion: And 'till then I do not allow their Subjects to resist them.

Your next Reason is, that they ought to be restrained for the *Common Good* of their People, as well as themselves; lest they should not only hurt or murder their Subjects, but themselves too. Now pray consider, if these mad and foolish Princes may be restrained and resisted, because they only murder, or hurt a few of their Subjects that may come in their way, then have not such *Tyrants* much greater Reason to be resisted and secured, that through unreasonable Revenge or Superstition, make War upon and destroy the People, for no other Cause, but because they will not submit themselves to their unreasonable Lusts? Or that burn Cities, massacre whole Towns of innocent Subjects, and enslave and oppress a late flourishing Kingdom; ought not these as well to be restrained or resisted for the *Common Good* of Mankind, though perhaps they will not

hurt

hurt or make themſelves away, as Mad-men or Fools may? Or can any reaſonable Man ſhew me, why the Extravagancies of ſuch mad or fooliſh Princes may be reſiſted, but the furious wicked, and tyrannical Actions of the other, muſt be ſubmitted to as the Ordinance of God? Or laſtly, why a natural Infirmity or Weakneſs, ſuch as Folly or Frenzy, ſhall make a Prince uncapable of Government; and yet why inſufferable Tyranny, which is a moral Diſability, ſhall give Princes a greater Privilege not to be reſiſted, I cannot underſtand; ſince the latter is much more deſtructive to the main Ends of Goverment; *i. e.* the Preſervation and Good of the People, than the former can poſſibly be.

As for your laſt Reaſon, that it is the higheſt Courteſy that can be done to ſuch mad and fooliſh Princes to ſhut them up, and hinder them from expoſing their Folly and Madneſs, and rendring themſelves ridiculous to the World, I think the Reaſon will hold more ſtrongly for the one, than the other. For as ſuch fooliſh and mad Princes would, if they could come to themſelves, thank thoſe who had done them ſo charitable an Office as to reſiſt them, and ſhut them up; ſo likewiſe, I verily believe, that if the Grace of God, or ſome natural Means or Accident, could ſo far open the Eyes of ſuch a Tyrant, as to let him ſee the Folly and Wickedneſſes of thoſe Courſes he takes againſt the People, he would, inſtead of being angry, thank his Subjects for reſiſting him; becauſe thereby they had not only hindred him from making himſelf any farther the common Hatred of his own Subjects, as well as his Neighbours; but alſo from committing ſuch heinous Sins and Offences againſt God, as Murder, Violence and Oppreſſion. To conclude; I grant, that as long as a cruel or wicked Prince can ſo far reſtrain his Vices and Paſſions, as to maintain the Ends of Civil Government above mentioned, he is to be obeyed as the Ordinance of God. But when he will ſet no Bounds to his Tyranny, but reſolves that his Luſt ſhall be unconfined, whereby he becomes inſupportable to his People, they may as well diſtinguiſh his Perſon from his Power, as they do in the Caſe of Princes, when they are either Fools or mad Men.

M. But pray conſider the reſt of the Conſequences of my laſt Diſcourſe; and will not then the ſuppoſing a Power in the People of making this Diſtinction when they pleaſe, and of judging when the Prince's Government becomes intolerably Tyrannical, make them to take upon them to judge it ſo, when it is quite otherwiſe, and ſo not ſcruple to rebel, or to reſiſt (as you call it) whenever they are in the Mind to do it? And we have the more reaſon to be afraid of this, becauſe from the long Parliaments, and their Adherents, making uſe of this Diſtinction among other ſpecious Pretences, were derived all the Miſeries of our laſt Civil War. And therefore, though I own it is an eaſy thing to judge of the Madneſs and Folly of Princes, as well as other Men; yet (the Wickedneſs and Partiality of humane Nature conſider'd,) it is a much harder Task to judge rightly what Actions of Princes are deſtructive to Civil Government, and render them as uncapable of it, as the moſt extravagant Actions of fooliſh and mad Princes can be pretended to make them ſo.

F. If the Inſtance of Mad-men and Fools ſeems to diſpleaſe you, becauſe it is very pat to the Subject in hand, I think I may likewiſe remark, that thoſe Inconveniencies you ſuppoſe of making the People Judges in this Caſe, is the ſole Objection I can find you have againſt what I have ſaid; for otherwiſe, I do not ſee you have any thing to alledge againſt the fitneſs of the Parallel. But I have already, I believe, made it pretty plain, that murdering, enſlaving and robbing of the People of their Properties, are things as eaſy to be judged of as Folly or Madneſs: And if a few Domeſticks about the Prince ſhall be allowed to judge when their Monarch is mad or fooliſh enough to be reſiſted and ſhut up, I cannot ſee any Reaſon, why the whole Body of the People may not as well be able to judge, when, by his Tyranny and Oppreſſion, he hath diſſolved the Government, and entred into a State of War with them.

But to return now to the laſt part of your former Anſwer, wherein you grant that this Word ἐξουσία, doth ſometimes ſignify not only the Perſon, but the Exerciſe of Authority; but that it doth not ſignify the right or lawful Uſe of it, but Abuſe too; and for the Proof of this, you alledge the Speech of *Pilate* to our Saviour; I am very well ſatisfied that that Text will make nothing for

your

your purpose: For though I grant that the Word in that place denotes Power or Authority, yet doth it not there signify the Abuse of it too: For certainly *Pilate* would never have told our Saviour, that he had a Power to abuse his Authority, and to condemn him, tho' innocent; neither would our Saviour have answered him, that he had that Power from above. And therefore, I think I may very well maintain my Syllogism to be true, notwithstanding your denying of the *minor* Proposition. For since you cannot affirm Tyranny to be the Ordinance of God, yet that the Power or Authority, of which this Tyranny is but an Abuse, is of Divine Institution; which is but a Fallacy, if it be look'd into. For though you may, vulgarly speaking, call all Tyranny an Abuse of Civil Power, yet some Tyranny is more than that: For it is not so properly an Abuse, as a Corruption of it into quite another thing, which God never instituted; and consequently therefore is not to be submitted to out of Conscience. It is an old Saying, *Corruptio optimi, est pessima*; and you may as well tell me, that Vinegar, notwithstanding its Acidity, continues Wine still, as that Civil Government, when it degenerates into the rankest Tyranny, continues still God's Ordinance: And if this be the true Consequence you draw from your Argument, it signifies little, *viz.* that the Abuse of this Power, doth not make void the Authority of the Law of God or Nature. For I think I may maintain the clear contrary to what you assert, *viz.* that the Obligation not to resist Supreme Powers, doth receive some Validity from the Justice they execute, and is weakened, and at last annulled, by their intolerable Violence or Injustice.

Nor are your Instances of *Saul* or *Pilate*, to the Question in hand: I grant *Saul* was God's Anointed, and could not have been lawfully resisted by *David*, notwithstanding his murdering of *Abimelech*, and the rest of the Priests: And *Pilate* might have his Authority from above, notwithstanding his Abuse of it: Yet doth it not therefore follow, that if either the one or the other had declared themselves sworn Enemies to the whole Nation of the *Jews*; and that instead of governing and protecting them, they had gone about utterly to destroy them, I think they had then ceased to be the Ordinance of God, and their Divine Commission had been at an end. To conclude: As for the Reason you give, why St. *Paul* might call the *Roman* Emperors by the Name of *Powers*, I shall not deny it. But whether by the Word ἐξουσία, the Apostle means *Persons* or *Powers*, is much at one; for if he means the former, he only urges Obedience to them as they are the means of the Happiness and Preservation of the People, as appears by the third and fourth Verse of the Chapter you now quote, where the main Reason St. *Paul* gives for our Obedience, is, That Rulers *are not a Terror to good Works, but to the evil*; and that he, (*viz.* the Supreme Power) *is a Minister to us for our Good*. And indeed, it had been a very odd way of enforcing our Obedience, for him to have said the quite contrary, that this Power was to be obeyed, because he was a *Terror to good Works*, and a *Plague to all good Men*, and a *Minister* to us of all manner of Mischief and Misery. This had been indeed an excellent way of proving the Supreme Powers to be the Ordinance of God.

M. Before I can give you a full Answer to what you have now said, I must beg leave to look back to the *beginning* of your *first Answer*, where you object, that if by the Higher Powers here mentioned, the Persons, and not the Authority of those in Power, are to be understood, then it would follow, that Tyrants and Usurpers are likewise the Powers ordained of God; which Objection, I think, may admit of an easy Answer:

First, "Can there be no wise Reason given why God may advance a bad Man (or Tyrant) to be a Prince? If there may, then it is no Reproach to the Divine Providence. The Natural End of Humane Societies is the Preservation of Publick Peace and Order; and this is in some measure attained even under the Government of Tyrants: But God hath a farther End than this, to bless and reward a virtuous Nation, or to punish a loose and degenerate Age; and there cannot be a greater Blessing than a wise and virtuous Prince, nor a greater Plague than a merciless Tyrant: And therefore the Providence of God is as much concerned in setting a good or a bad Prince over any People, as in rewarding or punishing them. Upon this account God calls the King of *S. C. R.* p. 120.

Isai. 10. 5, 6. " *Assyria, the Rod of his Anger, whom he raised up for the Punishment of an Hypo-*
" *critical Nation.*

Ib. p. 121. Secondly, " I have already proved, that by the Powers in this Text, the Apos-
" tle means the Persons of Soveraign Princes; and therefore, according to his
" Doctrine, those Princes who were then in being, that is, the *Roman* Emperors,
" were advanced by God; *the Powers that be*, that is, the Princes and Emperors
" who now govern the World, are ordained and appointed by God, and that
" thus it is, God himself tells us: *I have made the Earth, and given it to whom it*
Jer. 27. 5, 6. " *seemed meet unto me; and now I have given all these Lands into the hands of* Nebu-
" chadnezzar, *King of* Babylon, *my Servant.*

This was also the Belief of the Primitive Christians under Heathen and persecuting Emperors. *Tertullian*, who wrote his Apology under *Severus*, asserts, " that *Cæsar* was chosen by God, and therefore that the Christians had a peculiar Propriety in *Cæsar*, as being made Emperor by their God." So likewise St. *Augustine*, *De Civitate Dei*, speaks to this purpose (as I remember): " God
" giveth Happiness in the Kingdom of Heaven to the Godly alone: But this
" earthly Kingdom both to the Godly and Ungodly, as it pleases him. He
" that gave the Government to *Marius*, gave it also to *Cæsar*: He who gave it
" to *Augustus*, gave it also to *Nero*: He who gave it to the *Vespasians*, Father
" and Son, most beloved Emperors, gave it also to the most cruel *Domitian*: And
" (not to recount the rest of them) he who gave it to *Constantine* the Christian,
" gave it also to the Apostate *Julian*. These things, without doubt, the only
" true God governed as he pleased, by Causes, though hidden, yet not unjust."
So likewise almost all the rest of the Fathers do own, that wicked and tyrannical Princes are given as Punishments to the People for their Sins; and so upon this account are to be endured, and not resisted, since it is God's Will to have it so.

S.C.R. p. 128. But as for Usurpers, I think I can give you a very satisfactory Answer; " for
" the most prosperous Rebel is not the Higher Power, while our Natural Prince,
" to whom we owe Obedience and Subjection, is in being: And therefore, tho'
" such Men may get the Power into their hands by God's Permission, yet not by
" God's Ordinance; and he who resisteth them, doth not resist the Ordinance
" of God, but the Usurpations of Men. Whereas in Hereditary Kingdoms, the
" King never dies; but the same Minute that the Natural Person of a King dies,
" the Crown descends upon the next of Blood: And therefore he who rebelleth
" against the Father, and murders him, continues a Rebel in the Reign of the
" Son, which commences with his Father's Death.

" It is otherwise indeed, where none can pretend a greater Right to the Crown
" than the Usurper; for there the Possession of Power seems to give a Right:
Ib. p. 129. " Thus many of the *Roman* Emperors came to the Crown by very ill means;
" but when they were possess'd of it, they were then the Higher Powers: For
" the Empire did not descend by Inheritance, but sometimes by the Election
" of the Senate, sometimes of the Army, and sometimes by Force and Power,
" which always draws a Consent (and Submission) after it. And therefore, the
" Apostle doth not direct the Christians to enquire by what Title the Emperors
" held their Crowns, but commands them to submit to those who had the Power
" in their hands: For the Possession of the Supreme and Soveraign Power is Title
" enough, when there is no better Title to oppose against it; for then we must pre-
" sume that God gives him the Irresistible Authority of a King, to whom he
" gives an Irresistible Power; which is the only means whereby Monarchies and
" Empires are transferred from one Nation to another: There are two Examples
" in Scripture which manifestly confirm what I have now said.

The first is in the Kingdom of *Israel*, after the Ten Tribes had divided from the Tribe of *Judah* and the Family of *David*, where God had not entailed the Kingdom upon any certain Family: For after *Jeroboam* the first King, it is plain by the Story in the Books of *Kings* and *Chronicles*, that for some Successions there was nothing but Rebellion, and the Murder of one King by another, so that the Kingdom rarely descended from the Father to the Son; and in the whole Succession of these Kings, it only remained in the House of *Jehu* for four Generations, and then it returned to its former Uncertainty, as you may see in the 15th Chap-
Ib. p. 131. ter of the 2d of *Kings*: All which plainly shews, " that where there is no regu-
" lar Succession to a Kingdom, there Possession of Power makes a King, who

" yet

" yet cannot afterwards be reſiſted and oppoſed without the Guilt of Treaſon:
" And this was the Caſe of the *Roman* Empire at the writing of this Epiſtle:
" And therefore the Apoſtle might then very well ſay, that *the Powers that be are*
" *ordained of God*; and that whoever had the Supreme Power in his hands, was
" the Supreme Power, that might not be reſiſted.

But it was otherwiſe in the Kingdom of *Judah*, which God himſelf had entailed on *David*'s Family, as appears from the Examples of *Joaſh* and *Athaliah*, which we diſcourſed of at our laſt Meeting but one: Which Examples plainly ſhew, that no Uſurpations can extinguiſh the Right and Title of a Natural or Hereditary Prince: Such Uſurpers, though they have the Poſſeſſion of the Supreme Power, yet they have no Right to it; and though God for wiſe Reaſons, may ſometimes permit ſuch Uſurpations, yet whilſt his Providence ſecures the Perſons of ſuch depoſed and baniſh'd Princes from Violence, he ſecures their Title too.

But to prove more plainly, that no Reſiſtance is to be made againſt the Perſons or Authorities of the Supreme Powers, let them be never ſo cruel and tyrannical, as it is evident not only from what St. *Paul* hath here written; but I ſhall alſo crave leave to inſiſt farther on that Text of St. *Peter* before cited, in his 1ſt Epiſt. 2d Chap. *Submit yourſelves to every Ordinance of Man for the Lord's ſake, whether it be to the King, as Supreme; or unto Governors, as unto them that are ſent by him for the Puniſhment of Evil-doers, and for the Praiſe of them that do well:* Where by *Ordinance of Man*, whether we underſtand, as ſome do, every Humane Law; or with others, more juſtly, ἀνθρωπίνη κτίσει, *every Humane Creature*, (as it is in the Original) that is, every Man endued with Supreme Power, it comes all to the ſame Senſe, and the King as the Supreme Power, and his Miniſters or Officers, as Powers ſubordinate to him, and acting by his Commiſſion, are to be ſubmitted to and obeyed as much as himſelf: And it had been in vain for St. *Peter* to have concluded this Exhortation with *fear God* and *honour the King*, if he had allow'd it lawful in any caſe to reſiſt him; ſince certainly no Man can honour him, whom he reſiſts: And that this is a Doctrine everlaſtingly true, appears by the time in which St. *Peter* and St. *Paul* wrote theſe Epiſtles, which was either under the Reigns of *Claudius* or *Nero*; and I ſuppoſe you will hardly meet with two worſe Men, or more cruel Tyrants, in all the Catalogue of Emperors: Since the former committed many wicked and cruel things by his Freed-men and Officers; and alſo baniſhed the *Jews*, and Chriſtians together with them, from *Rome*: And the latter is ſo notorious for his Cruelty, and Perſecution of the Chriſtians, that his Name paſſes into a Proverb. And yet theſe were the Higher Powers, to whom the Apoſtles commanded them to be ſubject. From whence you may ſee your Error in interpreting the ἐξουσία, to ſignify *juſt* and *lawful Authority*; whereas it plainly ſignifieth in this place, the *Men veſted with this Authority* howſoever tyrannically they abuſe it. Ver. 13, 14.

F. You have made a pretty long Reply; and I have heard it patiently, becauſe, I confeſs, that on this depends the whole Controverſy between us: And therefore I ſhall beg that you would hear me with the like Patience; becauſe what you have now ſaid, I grant to be of that weight, as to require a large, as well as a conſiderate Reply. And therefore I ſhall make bold to conſider the laſt part of your Speech in the firſt place, becauſe I can ſooneſt diſpatch it: As for your Argument, that we ought to be ſubject to the moſt tyrannical Governors without any Reſiſtance, becauſe *Claudius* or *Nero*, whom you ſuppoſe to be cruel Tyrants, then govern'd the Empire, and perſecuted the Chriſtians.

In anſwer to this, I muſt tell you, that if you pleaſe better to conſider of it, you will find it very doubtful whether St. *Paul* wrote this *Epiſtle to the Romans* during the Reigns of *Claudius* or *Nero*. The Learned Monſieur *Capel*, in his Diſcourſe which he hath written, on purpoſe, concerning the Time of the Writing of this Epiſtle, proves this *Epiſtle to the Romans* to have been written during the latter End of the Reign of *Claudius*. But thoſe Learned who will have it written during the Reign of *Nero*, do all agree, that it was in the beginning of it, within the firſt five Years, when the Adminiſtration of Affairs was under the Miniſtry of *Seneca* and *Burrhus*, and when the Government of the Empire was moſt juſt and moderate, and divers Years before ever *Nero* burnt the City, or perſecuted the Chriſtians, and did ſo many extravagant, cruel, and tyrannical Actions, as

forced the Senate to declare him the Enemy of Mankind. But as for *Claudius*, he never perſecuted the Chriſtians at all, as I know of.

M. I pray, Sir, give me leave to interrupt you a little: Did not *Claudius* perſecute the Chriſtians, when under the notion of *Jews* he baniſhed them from *Rome*, as appears by *Acts* the eighteenth, when *Aquila* and *Priſcilla* were forced to quit *Italy* and come into *Greece*, becauſe of that Edict? And yet it was this very *Claudius*, to whom St. *Peter* (if not St. *Paul*) doth require all Men to be ſubject without any Reſiſtance.

F. I think this Difficulty will eaſily be anſwered; for in the firſt place, tho' I grant that *Claudius* towards the latter end of his Reign baniſhed the *Jews* from *Rome*; yet did he not baniſh the Chriſtians from thence, as we know of, any otherwiſe than as they were *Jews* by Nation; and upon this account it was, that *Aquila*, being a *Jew* by Birth, was forced to quit *Rome* with the reſt: But neither *Suetonius*, nor any other Author, tells us, that he likewiſe baniſhed the Chriſtians, tho' I know indeed there are ſome learned Men that would interpret this Paſſage in the former Author, in his Life of *Claudius*: *Judæos tumultuantes, impulſante Creſto Roma expulit*; to be meant of the Chriſtians being expelled *Rome*, as inſtigated by Chriſt their Prophet to Sedition. But tho' I own that our Saviour was ſometimes called *Chreſtus* by the *Pagans*, by way of Contempt, yet that by this *Chreſtus* here mentioned, cannot be underſtood our Saviour Chriſt, is very evident; for it had been very improbable for *Suetonius* to have made Chriſt, who was dead above thirty Years before, to have excited the *Jews* to Sedition: And therefore the Lord Primate *Uſher*, in the 2d Volume of his *Annals*, (with much better Reaſon) ſuppoſes, that not our Saviour, but ſome ſeditious *Jew* called *Creſtus*, who headed this Sedition, was the cauſe of the Baniſhment of the *Jews* from *Rome*: So that this was no more a Perſecution for Religion, than it would have been for the Parliament in King *Charles* the Second's Reign, during the heat of the Popiſh Plot, to have baniſhed all the Papiſts out of *England* upon the account of their former Rebellions, and conſtant Machinations to overturn the Government, and Religion eſtabliſh'd by Law: But ſuppoſing this Edict to have baniſhed the Chriſtians as well as *Jews*, it had ſignified nothing; for it was no Perſecution for Religion: And beſides, being made in the laſt Year of *Claudius*, it was but a temporary Edict; and we find the *Jews* to have lived quietly at *Rome* in the Reign of *Nero*, as appears by the laſt Chapter of the *Acts*.

But as for *Claudius*'s Government, it was ſo far from being an inſupportable Tyranny, that there was no Prince that did take more care to do impartial Juſtice, according to that ſmall Capacity he was Maſter of, than himſelf. And tho' I yield, that by his Proconſuls, Preſidents and Freemen, there were many Oppreſſions and Cruelties committed in the Provinces; yet it was only againſt ſome private Men, and did not extend to the deſtroying and enſlaving the whole Body of the People, who during his Reign generally enjoyed their Liberties and Properties with as great Freedom, as under any of his Predeceſſors.

And as for *Nero*, all Eccleſiaſtical Hiſtorians agree, that if this Epiſtle of St. *Paul* was written in his Reign, it was within the firſt five Years of it, which was in his Non-age, under the Adminiſtration of *Seneca* and *Burrhus*; during which time all prophane Hiſtorians agree, that the Empire was never better governed; and as for the Wickedneſs and Violence that *Nero* committed afterwards, when he perſecuted the Chriſtians, murder'd his Mother, his Wife, and moſt of his beſt, and moſt intimate Friends, and ſet the City on Fire: St. *Paul* was ſo far from knowing any thing of them, that ſure he would not have urged it to the *Romans*, as a Reaſon of their Subjection to him, that *Rulers are not a Terror to good Works, but to the evil*, or that he was a Miniſter to them, that is, *to the Subjects for good*; nay, even in the worſt of his Reign, as far as Juſtice was duly adminiſtred by himſelf, or his Under-Officers, I grant, he was not to be reſiſted, notwithſtanding his Perſonal Crimes, which could only reach a few Perſons, ſince a wicked Man may often make a tolerable Prince.

And though *Domitian* was in his own Perſon a cruel Tyrant, yet he was ſo far commendable, and to be born with by his Subjects, that during his Reign the Proconſuls, Preſidents, and other Inferior Magiſtrates, were never freer from Corruption and Oppreſſion: Whereas when *Nerva* (who was a mild good-natur'd Prince) ſucceeded him, by his too great Lenity towards thoſe Inferior Magi-

Magistrates, all things presently degenerated into a most sad Condition, Justice being sold and perverted, and the Poor robbed and oppress'd, by the Violence of the Rich and Powerful. And even *Nero* himself had this Commendation from his greatest Enemy, *Suetonius*, that he would not be governed by his Officers and Freed-men (as *Claudius* was) to do *foolish and unjust things*. So that if *Nero* himself had not by burning the City, and by murdering the innocent Citizens in the Night, made himself a publick Enemy; I do not see but his Government might very well have been born with, notwithstanding his Personal Crimes and Vices: For if you please to remember, I have already excepted Personal Faults in Princes, from being any just cause of resisting their Authority, if they are such as can anyway consist with the Common Safety and Welfare of the People.

M. I must confess I never yet consider'd this matter, concerning the Time when St. *Peter* and St. *Paul* wrote these Epistles; and you'll pardon me if I do not readily allow what you say, but I promise you to consider farther of this matter, and examine the Authors you have quoted: But however, whether the Christians were then actually persecuted, or not, or whether these Emperors were then actually Tyrants, or not, signifies very little to me; for these Holy Apostles might very well foresee, not only by Divine Revelation, but by Natural Prudence or Foresight, that the Emperors would prove great Tyrants and Persecutors of the Church; and the late Example of the Emperor *Caligula* had shewed them not only the Possibility, but also the great Likelihood that it might happen again: And therefore it is no wonder, that these very Apostles do, in consideration of this, command all Christians to submit to, and obey all Supreme Powers, and their Subordinate Officers, upon pain of Damnation: And if St. *Peter*, in this Chapter last quoted, commands *Servants to be subject to their Masters, not only to the Good and Gentle, but also to the Froward*, (that is, to the Cruel and Ill-condition'd) and gives this Reason for it: *For this is thank-worthy, if a Man for Conscience towards God endures Grief, suffering wrongfully*: And enforces it with this great Motive, *For even hereunto were ye called, because Christ also suffered for us, leaving us an Example, that ye should follow his Steps*: And if Servants, or Slaves, were to be subject to their Masters, let them use them never so cruelly, it will, I think, hold more strong for Soveraign Powers, who are the immediate Ordinance of God.

F. You need not have made your Answer half so long, if you had been pleas'd to take notice, that I have still excepted any Resistance which might be then made against the *Roman* Emperors, upon the account of Persecution for the meer score of Religion; since I grant, that our Saviour hath, for those particular Reasons I have already alledged, commanded us to a patient Suffering, and bearing Testimony to the Truth of his Religion by Martyrdom, or any other Sufferings which he shall think fit to inflict upon us by lawful Authority, and for the like ends for which they were to suffer. Yet hath he not therefore taken away all those other Natural Rights, which whole Nations had of Self-defence against Tyranny and Slavery, whensoever they are exercised upon them. Nor doth your Argument from the Duty of Slaves to their Masters, at all concern Subjects, much less whole Nations: For, I hope, there is a great deal of difference between them and perfect Slaves, who having no power over their own Persons, and so had neither Liberties nor Properties to lose.

But besides, if you please better to consider this Text, you will find, that this did wholly concern such Christian Slaves who were for their Religion's sake oftentimes the more cruelly treated by their Heathen Masters: And therefore those Words you have but now repeated, *If a Man for Conscience sake suffers wrongfully*, as likewise those in the 20th Verse, *If you do well, and suffer for it*, can only be meant of Suffering for the Profession of Christ, since no Heathen Emperors, nor Masters, ever persecuted their Subjects, or cruelly treated their Slaves, for well doing; that is, doing those Duties and Services that they owed them; and therefore, this place makes nothing at all to the Question in hand.

M. But pray tell me, doth not the Apostle *Paul* expresly command *every Soul*, that is, *every Man* whatsoever, (not whole Nations excepted) *to be subject to the Higher Powers?* And since you grant it to be true as to particular Men, why it should not likewise hold as to whole Nations, I can see no reason, unless you will be wiser than the Apostle, and make Exceptions out of this general Rule, where the Scripture itself makes none: For can any thing be more express than this, *that*

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they that reſiſt ſhall receive to themſelves Damnation; and the Word is in the plural Number, *they*, and muſt therefore take in all Men, none excepted: I have urged this already, and finding you have not given me an Anſwer to it, I make bold to remind you of that Omiſſion.

F. I beg your pardon, if the multiplicity of your Objections hath made me omit any thing that was material to be anſwered; but the truth is, I ſuppoſe that I had in effect done it already; but ſince you will needs have it made plainer to you, I hope you will pardon me, if in the doing of it I am forced to uſe ſome Repetition. Therefore in the firſt place, I ſhall not deny the Interpretation which our Tranſlators put upon this Word Κρῖμα, which tho' it ſometimes ſignifies not eternal Damnation, but temporal Judgments; yet I will own it will not well agree with what follows in this place, which are only temporal Reaſons and Motives for this Duty. Now underſtand this Word Κρῖμα in the Scripture Senſe, and tho' I do it will be much at one; for I have already proved to you, that whether you take theſe ἐξουσίαι for Powers or Perſons, they are not abſolutely irreſiſtible, and I have St. *Chryſoſtome* on my ſide in the Interpretation of this Word, who underſtands no more by it, than that Civil Power or Authority is from God, but not the Tyrants or wicked Men that execute it; but if it be taken for the Perſon endued with this Authority, I have alſo ſhewn you, that when they degenerate into intolerable Tyrants they loſe their Character, and may be reſiſted as well as Mad-men and Fools. So much in reſpect of the Powers themſelves, and now to come to the People: I think I have given very good reaſons already, why a whole People or Nation, or the major part thereof, may have a Right to reſiſt the Supreme Powers, and yet that I need not allow particular private Perſons the ſame Liberty; and one great Reaſon is, becauſe they cannot, and the other becauſe they ought not to do it. The firſt you yourſelf do acknowledge, ſince you ſay, *a private Perſon, when he makes ſuch Reſiſtance, doth it at his own peril, when he hath only his own ſingle-ſelf to oppoſe againſt his Prince. And that ſingle Perſons don't uſe to reſiſt, nor is there any great danger to the Publick if they do.* To which I ſhall likewiſe add a much better Reaſon, which I have alſo given you before, why private Subjects ought not in a Civil State to made publick Diſturbances, to avoid any Violence that may be done to their particular Perſons or Eſtates, becauſe every private Subject ought to prefer the Peace and Happineſs of the Commonwealth, whereof he is a Member, before his own private Intereſt, which being a Dictate of the Law of Nature or Right of Reaſon, cannot extend to the whole Nation or Civil Society: ſince it is as much againſt the Law of Nature, for that to be deſtroyed, beggar'd and enſlaved, as it is that God ſhould ordain all Mankind to be ſo. And therefore our Saviour and St. *Paul* never intending to alter any of thoſe great Laws of Nature, it cannot be believed that they would tye Mankind to ſuch ſtrict and ſevere Rules of Non-reſiſtance and Subjection, as ſhould expoſe them to Beggary, and Slavery, and Ruin, with all the Miſeries of this Life: Nor do I find that either our Saviour or his Apoſtles have either promiſed eternal Life for ſuch ſlaviſh Subjection, or threatned Damnation for ſuch Reſiſtance.

M. To anſwer what you have now ſaid, I muſt in the firſt place take notice, that tho' I grant St. *Chryſoſtome*, for fear of making Tyrants and wicked Princes to be ordained by God, gives that Interpretation of the Word ἐξουσία which you have now done; yet he owns the Doctrine of Non-reſiſtance, becauſe the Power is from God, as you may here ſee in theſe Quotations out of him, which the learned Primate hath made uſe of in the ſecond Part of his Treatiſe of the *Power of the Prince*, which you may, if you pleaſe, read with me, and compare the *Greek* in the Margin; *Page* 111, 112. "For it is the pleaſure of God, that the Magiſtrate, whom he hath "ſtamped with his own Image, ſhould have alſo his own Power. And he that "obeyeth not him, makes War, in a ſort, with God who hath appointed theſe "things. Let us not therefore invert this Order, nor fight with God; demon- "ſtrating by our Deeds that Saying of the Apoſtle, *Whoſoever reſiſteth the Power, "reſiſteth the Ordinance of God.*" So likewiſe in another Place, "If we reverence "and fear thoſe Magiſtrates that are elected by the King, altho' they be wicked, "altho' they be Thieves, altho' they be Robbers, altho' they be unjuſt, or "whatever they be; not deſpiſing them for their Wickedneſs, but ſtanding in "awe of them for the Dignity of them that did elect them; much more ought *Ibid.* p. 116. "we thus to do in the Caſe of God." But it is no matter in what ſenſe this, or

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any other Father takes these Words, so long as the Doctrine of Non-resistance is secure.

But it seems very strange, that you cannot find that our Saviour and his Apostles have neither promised eternal Life for slavish Subjection, nor threatned Damnation for Resistance; for as sure as the Words are, that *they that resist shall receive to themselves Damnation*, so sure it will likewise follow, that they that do the contrary, and are patiently subject, shall receive eternal Life. I beg your Pardon for this Interruption, therefore pray go on with the rest of your Reply: And let me see how you can avoid Damnation, if the Words of the Apostle are true.

F. The Question is still the same as it was before, notwithstanding what you have now said; for it is not, whether some Resistance be not unlawful, but whether all Resistance whatsoever be that Resistance forbidden by the Apostle. And to let you see that you do not put such a strict Interpretation upon other places of Scripture, pray tell me the reason why, when our Saviour expresly commands us, *Not to resist the Evil*, (that is, the Evil Doer) *but whosoever shall smite thee on thy right Cheek, turn to him the other also. And if any Man will sue thee at the Law, and take away thy Coat, let him have thy Cloak also. And whosoever shall compel thee to go a Mile, go with him twain. Give to him that asketh thee, and from him that would borrow of thee turn not thou away.* [Or yet those more severe Commands] *of pulling out the right Eye, and cutting off the right Hand, if they offend us; of making ourselves Eunuchs for the Kingdom of Heaven's sake*; and that *he that can receive it, let him receive it.* What is the reason, I say, why those places of Scripture, which taken literally, are as strict as this you now quote, *That they that resist shall receive Damnation*; yet that most of the Fathers, as well as the more modern Commentators, put a figurative, and not a literal Sense upon these Texts? Pray tell me your reason why they do so.

Mat. 5. 39, 40, 41, 42. Ver. 28. 29.

M. I think the reason is very plain, because to understand them in a literal Sense, were utterly unpracticable, and contradictory to the common Sense and Notions of Mankind, and those natural Dictates of Self-preservation, which St. *Paul* approves of, when he says, *No Man yet hated his own Flesh*; and it was altogether unsuitable to the Doctrine of Christ, which was intended for the perfection of humane Nature, that is, of Men's Souls and natural Reason, and for the Quiet and Happiness, not Hurt and Destruction of their Bodies.

F. I grant your Reasons are very good and self-evident; but pray tell me, is it not as much against the common Sense and Notions of Mankind, that God should give Civil Soveraigns an Arbitrary Irresistable Power to Murder, Destroy and Ruin their People, if they should think fit so to do, or that Jesus Christ, who, you say, came into the World for the perfection of our humane Nature, and not for the destruction of our Bodies, should give the Supreme Powers an Authority to do the same things with Murderers and Thieves; and that it was unlawful for Men to defend themselves against their Violence, if they could. So that I can see no reason why this Precept against Non-resistance may not be taken in a limited or rational Sense, as well as *Swear not at all*; which, tho' as expres as Words can make it, yet Commentators interpret it to extend no farther than against swearing in common Communication. So likewise this Precept, *Children obey your Parents in all things*; which without the reasonable Interpretation of all things lawful, would oblige Children to obey their Parents in whatsoever they commanded them, whether good or bad.

But to come to your Quotations out of St. *Chrysostome*, which you would oppose against mine; I think they will not serve so much to your purpose as you imagine. For I grant that the Supreme Magistrate derives his Power from God, but not a Power to murder and destroy; so likewise he that *obeyeth him not, wars in a sort with God*; and that *whosoever resisteth the Power*, (that is, when it is executed according to God's Will) *resisteth the Ordinance of God*. And as for the last Quotation concerning the Reverence that is due to subordinate Magistrates elected by the the King, tho' they are Wicked, Thieves and Robbers, &c. and consequently, much more the King who sends them; this, tho' the strongest place of the three, yet will not do the Business; for I believe you cannot suppose that St. *Chrysostome* there means that subordinate Magistrates, sent by the King, were really Thieves and Robbers, and took away Men's Goods upon the common Road, but

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only that by Bribery and Corruption in their Offices they did rob and peel the People, as much as if they had really been ſo; which extending only to ſome few Perſons, was rather to be born with (as any intolerable Inconveniencies in Civil Government are) than for the People to take Arms and reſiſt them. But I think the Caſe would have been much otherwiſe, had theſe ſubordinate Magiſtrates, by vertue of the Emperor's Commiſſion, made uſe of his Forces to murder and rob the Subjects of thoſe Provinces over which they were ſet; and that it would not have been any Rebellion in the People, if they ſhould have taken Arms and reſiſted them, ſince the Emperors did not impower ſuch Magiſtrates to murder or rob, but to protect his Subjects.

But to give you a Quotation out of St. *Chryſoſtome*, in lieu of yours, I ſhall ſhew you his Comment upon theſe Words in his 23d Homily on the *Romans*, "Let "every Soul be ſubject to the higher Powers, (that is, ſays he) that Chriſt might "ſhew that he had not inſtituted his Laws ſo, that he would overturn all common "Policy and Government, but that he might reform it to the better, and might "alſo teach us, that ſuperfluous and unneceſſary Wars were not to be undertaken, "becauſe it was then a common Diſcourſe traducing the Apoſtles as Seditious and "and Innovators, and doing all things they could to overthrow the common Con-"ſtitutions of their Country;" and therefore he ſtops the Mouths of the *Jews* and and *Heathens* with theſe Words.

From whence we may infer, that St. *Chryſoſtome* did not believe that St. *Paul* wrote this only to give Tyrants a Power to do whatever they pleaſed againſt their Subjects without any Reſiſtance; nor yet that Subjects ſhould begin unneceſſary and unlawful Wars, by reſiſting them upon every ſlight Occaſion: Nor doth this Father here forbid Subjects to reſiſt in caſes of the higheſt Tyranny or Oppreſſion that could befall them; ſo that I take the true Senſe of theſe places of St. *Peter* and St. *Paul* to be no more than this; "Let every Chriſtian ſubmit to the Su-"preme Powers, *i.e.* to the Emperor, and all other ſubordinate Magiſtrates ſent "and appointed by him. For all ἐξουσία or Civil Authority is from God; and "Magiſtrates juſtly exerciſing this Power are from him; and in his ſtead, all Su-"preme Powers, under whatever different Names or Titles they be, are by God's "Providence appointed in the World, for its Order, Peace and the well Gover-"ning of it. He therefore that reſiſteth ſuch Supreme Powers, whoever he be, "reſiſteth the Ordinance of God," that is, the means that God hath ordained for the reſtraining the diſorderly Luſts and Paſſions of Men. And they that will not obey their Laws, as far as the Laws of God or Nature may permit, but will reſiſt, ſhall receive to themſelves Damnation. And thus far even Tyrants and Uſurpers may be obeyed, tho' not as ſuch, but as Diſpenſers of publick Juſtice, and Executors of the Laws, and ſo are God's Miniſters for Good; that is, for the publick Peace and Safety. But neither the *Apoſtle*, nor St. *Chryſoſtome* his Commentator, any where ſay, that either the Power, however exerciſed, or the Perſons that thus abuſe it to the Deſtruction of Mankind, are likewiſe from God.

M. But pray conſider the Medium a little more cloſely, by which the Apoſtle proves and enforces this Doctrine of Subjection or Non-reſiſtance. For, ſays he, *There is no Power but of God, the Powers that be are ordained of God. Whoſoever therefore reſiſteth the Power, reſiſteth the Ordinance of God.* The plain meaning of which is this, That Soveraign Princes, whether good or bad, Tyrants or good Governors, being advanced to the Throne by God, are his Miniſters and Vicegerents, inveſted with his Authority and Power to govern; and therefore when we reſiſt our Prince, we reſiſt the Ordinance, Conſtitution and Appointment of God; and ſuch Men do not reſiſt, rebel or fight againſt Man, but God; as he who reſiſteth any ſubordinate Magiſtrate, reſiſteth his Prince, from whom they receive their Authority and Commiſſion. And this is a very forcible Argument for Subjection to Princes; for whatever our Prince be, it is certain that God hath an abſolute and uncontroulable Right over us, as being the true Lord and Governor of the World; and if earthly Princes are placed in the Throne by him, who is at liberty to put the Government of the World into what Hands he pleaſes, who will dare to oppoſe God? or ask him, why haſt thou done ſo? Whoever hath any ſenſe of God's Dominion and Soveraignty, dares not rebel againſt him, and he who believes that Princes are made by God, will no more dare to rebel againſt his Prince, than againſt God himſelf;

S. C. R. p. 116, 117.

himſelf; ſince (as I ſaid before) evil Princes may be ſent by God for a Puniſhment to a wicked People, as well as good ones for a Bleſſing to a pious Nation.

F. If you had pleaſed to have conſidered what I have already ſaid, you might have ſpared this Objection; for it is no more than what hath been already anſwered; for tho' I grant that Soveraign Princes are advanc'd to the Throne by God, and are by him inveſted with Power and Authority to govern; and that when we reſiſt our Prince, we reſiſt the Ordinance of God; yet I deſire to be judged only by your own Words in this matter; the Prince receives from God Authority to govern; but is the murdering, ruining and enſlaving the People, any part of Civil Government? And when we reſiſt our Prince, we reſiſt the Ordinance of God; but is the reſiſting of an implacable Tyrant, and an Enemy of Mankind, reſiſting the Ordinance of God, or fighting againſt him? And I deſire you only to conſider the force of your own Compariſon; for (you ſay) he who reſiſteth any ſubordinate Magiſtrates, reſiſts the Prince from whom they receive their Authority and Commiſſion; yet it is only in ſuch things, which the Prince hath given them Authority or a Commiſſion to do: As for Example, a Bayliff may arreſt me for Debt by vertue of the King's Writ; yet if he goeth about to rob or kill me, I may lawfully reſiſt him; and if I kill him, it is no Murder. The ſame may be ſaid of all other ſubordinate Miniſters, how great ſoever they are; there to carry on your Parallel, the ſame that ſubordinate Magiſtrates are in relation to Princes, the ſame are Princes in reſpect of God: Therefore if they never received any Commiſſion or Authority from God to deſtroy and enſlave their People, they ſo far ceaſe to be the Powers ordained by God; and, ſure, may then be reſiſted by their oppreſs'd People.

As for the reſt of your Speech, as far as Earthly Princes are plac'd in the Throne by God, and govern there like his Vicegerents, I own they are not to be oppoſed; but ſince you will have them to be ſubmitted to, becauſe they may be ordained by God for a Puniſhment for a wicked People; I thank you for putting me in mind to anſwer what you have before ſaid upon that Subject. I do not deny, but God may often, for the Puniſhment (as you ſay) of a ſinful Nation, give them a wicked or tyrannical Prince; and likewiſe that ſuch a Prince, when thus impoſed by God, is to be born without Reſiſtance, as far as is poſſible, or may conſiſt with their being a People, and with thoſe Enjoyments of Life, which are neceſſary to their being Subjects and Free-men, and not Slaves: And tho' I grant that God doth likewiſe ſometimes puniſh a wicked Nation by appointing Conquerors, ſuch as the King of *Aſſyria*, to carry them away Captive, and to reduce them to the loweſt Condition of Poverty and Slavery, as in this Caſe of the *Jews* by the King of *Babylon*, who was then the Rod of God's Anger, and whom he raiſed up for the puniſhment of an Idolatrous and Hypocritical Nation. Yet when he doth ſo, excluding all farther Reſiſtance in the People, it can only be known by divine Revelation, and cannot extend to all Conquerors whatever, whether by Right or Wrong. And therefore, as God doth often in his Anger deliver the People up to the Power of ſome cruel Conqueror or Tyrant; ſo likewiſe will he, in his good Time, and upon their Repentance, deliver them from it again. Now this Deliverance muſt be perform'd either by Miracles or humane Means; but Miracles are ceaſed, and therefore ſince only humane Means remain, theſe muſt be either, *Firſt*, By changing the Hearts of ſuch tyrannical Princes into a better and more merciful Temper towards their Subjects, as *Solomon* ſays, *The King's Heart is in the Hand of the Lord, as the Rivers of Water he turneth it whitherſoever he will.* Prov. 21. 1. Or elſe *Secondly*, By taking away ſuch a tyrannical Prince out of the World, and putting another in his ſtead, who may govern the People more mercifully, and who will not any more deſtroy or oppreſs them, as his Predeceſſors did. Or *Thirdly*, By ſtirring up ſome Neighbour Prince to revenge the Injuries and Oppreſſions done unto ſuch a perſecuted and almoſt ruined People; and to reſtore them to the enjoyment of their former Liberties, Religion and Eſtates. Or *Laſtly*, By ſtirring up the People themſelves to riſe and reſiſt thoſe Oppreſſions they lie under, by their own ſingle Forces, or by imploring the Aſſiſtance of ſome powerful neighbouring Prince or State. Now I ſuppoſe you will not deny, but that the Firſt and Second of theſe Means very rarely happen; and as for the Third, we ſeldom find that when a former Prince is taken out of the way, his Succeſſor grows ſo ſenſible of

the Tyranny and Miſ-government of his Predeceſſors, as to let go any of that Arbitrary Power which he hath uſurped, or to remit any of thoſe intolerable Taxes and Oppreſſions which he hath laid upon them; but are commonly like *Rehoboam*, when they come to the Crown, ſo far from making their People's *Yoke more eaſy*, that they rather lay it *more heavy* upon their Necks; as we may ſee in the Kingdom of *France*, in theſe three laſt Deſcents, where every Prince hath been ſtill more ſevere and tyrannical than his Predeceſſor; for finding himſelf inveſted in this abſolute and deſpotick Power, without any unjuſt Act of his own, he will exerciſe it as he found it, and will think himſelf not at all obliged in Conſcience to reſtore any of thoſe Rights his Predeceſſors had formerly uſurp'd upon the People; ſince we find, Princes ſeldom loſe any thing they have once got: And this may continue to all Generations, for ought we know, (which is much too long for a Puniſhment) unleſs ſome extraordinary Accident fall out, as we now ſee by the Example of the *Greek* Chriſtians, who having lain divers Ages under the *Mahometan* Yoak, are now reſtored to the Liberty of their Religion, by the Arms of the *German* Emperor and *Venetians*; and are ſo far from being blamed for joining themſelves to their Deliverers, that they are rather commended by all Chriſtendom for ſo doing. And I ſee no reaſon why good *French-men*, as well Proteſtants as others, may not as juſtly join themſelves to the Prince of *Orange*, or any other foreign Prince, who will be ſo generous as to undertake their Deliverance from that cruel Yoak they lie under, and will reſtore them to their antient Liberties, and the Proteſtants to the free Exerciſe of their Religion: Nor can I ſee any reaſon why God ſhould deliver a People into Servitude whenever a tyrannical Prince hath ſufficient Power to oppreſs them; and why God may not be as well ſaid to deliver them, as often as the People find fit means and opportunity ſo to ſet themſelves free. For doth ſuch a Tyrant derive his Authority from God to oppreſs only becauſe he hath Power? And may not the People likewiſe from the ſame Original, derive a Right to defend themſelves againſt ſuch an intolerable Oppreſſion? Otherwiſe, God would chiefly regard and provide for this deſtructive tyrannical Power of Princes, as the chief end of all Civil Society, and make the Good and Happineſs of the People a thing ſubordinate to that, or rather only by the by, which is contrary to Reaſon. 'Tis true, the Prophet *Amos* ſaith, *That there is no Evil in a City which God hath not ſent*: So likewiſe are all natural Evils, ſuch as Famine, Peſtilence, Inundations and Foreign Enemies; and yet have not the People in theſe Caſes a Power to rid themſelves of them, if they can, by all natural humane Means? and yet they may be likewiſe Puniſhments ſent from God. And if they may reſiſt and decline ſuch common and natural Judgments, without ſtaying for an expreſs Revelation for that purpoſe; why may they not for the ſame Reaſon rid themſelves of ſuch a Judgment as intolerable Tyranny, when they are able, and have an Opportunity to do it? ſince they proceed from the like common Diſpenſations of God's Providence. Or elſe we muſt believe that the Wickedneſs of one, or more Perſons, for the Deſtruction of Civil Society, is more particularly derived from God, than the Power of the whole People for their own Preſervation, and the common Good and Happineſs of the Commonwealth: By which means Princes would have the ſame Power and Right over their Subjects Bodies and Eſtates, as they have over thoſe of their Beaſts, to ſell, kill and devour them at their Pleaſure.

Cl. 3. 6.

M. Tho' I grant it may be lawful for People to remove natural Judgments by humane Means; yet doth it not follow, that they may therefore remove by Force, ſuch Puniſhments as God pleaſes to lay upon them from the Abuſe of Civil Authority by the Supreme Powers, ſince he hath particularly enjoined them to bear ſuch Puniſhments patiently without any Reſiſtance, becauſe they are inflicted by thoſe whom God hath ordained for our temporal Governors and Maſters, and whoſe Violences and Oppreſſions, as long as they continue in their Sins, God hath very good reaſon to continue upon them; and if they repent, they may be aſſured that in his good time, he will either remove them, or turn them to the beſt; for *all things* (even Afflictions) *work for the good of them that fear him.* And God will not ſuffer *thoſe that truſt in him to be afflicted beyond what they are able to bear*: And if this Doctrine of yours might take place, both Servants and Children, in the State of Nature, might, upon the like Pretence, both reſiſt and turn their Father and Maſter out of Doors, becauſe (forſooth) their Government was ſo ſevere

and tyrannical, that it was not any longer to be endured by them; and tho' such severe Fathers or Masters may be ordained by God for the Punishment of such wicked Children and Servants; yet that being no more than other natural Judgments, they may be without any Sin removed by Force or Resistance, whenever they thought themselves strong enough to do it: And if this Doctrine be wicked and absurd in private Families, then is it much more so in Kingdoms; for certainly there is a more perfect Subjection due to a Soveraign Prince, than to a Father or Master; for he is more eminently the Minister of God, and acts by a more sacred and inviolable Authority. And notwithstanding what you have said to the contrary, that the Precept given to Servants by St. *Peter* doth not concern Subjects, I think I can very well prove that it doth; as appears from the Example of Christ, which the Apostle there recommended to our imitation, who was the most innocent Person in the World, and yet suffered the most barbarous Usage, not from the Hands of a private Master, but of the Supreme Powers. And therefore, when he commands, in the same Chapter, *to submit to Governors, as to those who are for the Punishment of evil Doers, and the praise of them that do well*; it is evident that he did not intend this as a Limitation of our Subjection, or as if we were not bound to be subject in other Cases, since in the very same Chapter he requires *Subjection not only to the good and gentle Masters, but also to the froward*, in imitation of the Example of our Lord, who suffered patiently under unjust and tyrannical Powers. I observe therefore, that the Apostle doth not alledge this as the reason of our Subjection; but as a Motive or Argument to reconcile us to the Practice of it. The reason of our Submission to Princes is, that they are advanced by God, that they are his Ministers, that those who resist them resist the Ordinance of God; and therefore we must submit for God's sake, out of reverence to his Authority. But it is only an encouragement to Subjection, to consider the great Advantages of Government, *That Rulers are not a Terror to good Works, but to the evil.* But tho' this Motive should fail in some Instances, yet whilst the reason of the Subjection lasts (and that can never fail while we own the Soveraign Authority of God) so long it is our Duty to be subject, whether our Prince do his Duty or not.

F. Altho' what you have now replied is no more, in effect, than a Repetition of what hath been said before; yet I forgive it, since your Cause will not admit no other; nor can I see any reason why natural Judgments may be removed by Force or natural Means, but not Moral or Civil ones; unless you could also prove, that it is God's express Command, that we may remove the one, but not the other; nor have you proved it otherwise than by telling me, that Princes are God's Ordinance, and are endued with irresistible Power, all which hath been already considered, and I have already shewn you it is neither commanded by God, nor yet ordained by him for the common Good of Mankind. And tho' I own that Afflictions may sometimes serve for a Punishment of a sinful Nation; yet it is as likely that such a great and lasting Punishment, as a merciless Tyrant, may as well bring the People to Repentance, and when they are sufficiently amended, they may very well enjoy the Benefits of it; and they may as well expect that God will bless all lawful Means for that End, whereof I take Resistance or Self-defence to be the Principal, since Miracles are ceased. And of this we have an Example in the second of *Kings, chap.* 18. For tho' *Ahaz*, the Father of *Hezekiah*, had submitted himself, and become Tributary to the King of *Assyria*; yet when *Hezekiah* his Son turned to the Lord, it is said, that he was with him, and that he rebelled against the King of *Assyria*, and served him not; and yet he was then as much subject to him, as *Jehoiachin* or *Zedekiah* were afterwards to *Nebuchadnezzar*. So that all that is new, in this Answer of yours, is only the fatal Consequences that it would bring upon all Families in the State of Nature; for then (forsooth) Children and Servants might likewise pretend, that the Government of their Fathers and Masters were so insupportable, that it was no longer to be endured, and so might rebel against them and depose them, which doth by no means follow; for I have already proved at our first Conversation, that some sort of Resistance, for the preservation of Life and Limb, may be lawful against the Outrages or Violence of a Father or Master of a Family; yet do I by no means allow that they should resist them for any other Correction or severe Usage which they shall inflict upon them; since Servants or Slaves, whilst they continue under their Masters Power, can have no Liberty or Property of their own to defend; and a Son, whilst he

the Tyranny and Miſ-government of his Predeceſſors, as to let go any of that Arbitrary Power which he hath uſurped, or to remit any of thoſe intolerable Taxes and Oppreſſions which he hath laid upon them; but are commonly like *Rehoboam*, when they come to the Crown, ſo far from making their People's *Yoke more eaſy*, that they rather lay it *more heavy* upon their Necks; as we may ſee in the Kingdom of *France*, in theſe three laſt Deſcents, where every Prince hath been ſtill more ſevere and tyrannical than his Predeceſſor; for finding himſelf inveſted in this abſolute and deſpotick Power, without any unjuſt Act of his own, he will exerciſe it as he found it, and will think himſelf not at all obliged in Conſcience to reſtore any of thoſe Rights his Predeceſſors had formerly uſurp'd upon the People; ſince we find, Princes ſeldom loſe any thing they have once got: And this may continue to all Generations, for ought we know, (which is much too long for a Puniſhment) unleſs ſome extraordinary Accident fall out, as we now ſee by the Example of the *Greek* Chriſtians, who having lain divers Ages under the *Mahometan* Yoak, are now reſtored to the Liberty of their Religion, by the Arms of the *German* Emperor and *Venetians*; and are ſo far from being blamed for joining themſelves to their Deliverers, that they are rather commended by all Chriſtendom for ſo doing. And I ſee no reaſon why good *French-men*, as well Proteſtants as others, may not as juſtly join themſelves to the Prince of *Orange*, or any other foreign Prince, who will be ſo generous as to undertake their Deliverance from that cruel Yoak they lie under, and will reſtore them to their antient Liberties, and the Proteſtants to the free Exerciſe of their Religion: Nor can I ſee any reaſon why God ſhould deliver a People into Servitude whenever a tyrannical Prince hath ſufficient Power to oppreſs them; and why God may not be as well ſaid to deliver them, as often as the People find fit means and opportunity ſo to ſet themſelves free. For doth ſuch a Tyrant derive his Authority from God to oppreſs only becauſe he hath Power? And may not the People likewiſe from the ſame Original, derive a Right to defend themſelves againſt ſuch an intolerable Oppreſſion? Otherwiſe, God would chiefly regard and provide for this deſtructive tyrannical Power of Princes, as the chief end of all Civil Society, and make the Good and Happineſs of the People a thing ſubordinate to that, or rather only by the by, which is contrary to Reaſon. 'Tis true, the Prophet *Amos* ſaith, *That there is no Evil in a City which God hath not ſent*: So likewiſe are all natural Evils, ſuch as Famine, Peſtilence, Inundations and Foreign Enemies; and yet have not the People in theſe Caſes a Power to rid themſelves of them, if they can, by all natural humane Means? and yet they may be likewiſe Puniſhments ſent from God. And if they may reſiſt and decline ſuch common and natural Judgments, without ſtaying for an expreſs Revelation for that purpoſe; why may they not for the ſame Reaſon rid themſelves of ſuch a Judgment as intolerable Tyranny, when they are able, and have an Opportunity to do it? ſince they proceed from the like common Diſpenſations of God's Providence. Or elſe we muſt believe that the Wickedneſs of one, or more Perſons, for the Deſtruction of Civil Society, is more particularly derived from God, than the Power of the whole People for their own Preſervation, and the common Good and Happineſs of the Commonwealth: By which means Princes would have the ſame Power and Right over their Subjects Bodies and Eſtates, as they have over thoſe of their Beaſts, to ſell, kill and devour them at their Pleaſure.

Cl. 3. 6.

M. Tho' I grant it may be lawful for People to remove natural Judgments by humane Means; yet doth it not follow, that they may therefore remove by Force, ſuch Puniſhments as God pleaſes to lay upon them from the Abuſe of Civil Authority by the Supreme Powers, ſince he hath particularly enjoined them to bear ſuch Puniſhments patiently without any Reſiſtance, becauſe they are inflicted by thoſe whom God hath ordained for our temporal Governors and Maſters, and whoſe Violences and Oppreſſions, as long as they continue in their Sins, God hath very good reaſon to continue upon them; and if they repent, they may be aſſured that in his good time, he will either remove them, or turn them to the beſt; for *all things* (even Afflictions) *work for the good of them that fear him*. And God will not ſuffer *thoſe that truſt in him to be afflicted beyond what they are able to bear*: And if this Doctrine of yours might take place, both Servants and Children, in the State of Nature, might, upon the like Pretence, both reſiſt and turn their Father and Maſter out of Doors, becauſe (forſooth) their Government was ſo ſevere

and tyrannical, that it was not any longer to be endured by them; and tho' ſuch ſevere Fathers or Maſters may be ordained by God for the Puniſhment of ſuch wicked Children and Servants; yet that being no more than other natural Judgments, they may be without any Sin removed by Force or Reſiſtance, whenſever they thought themſelves ſtrong enough to do it: And if this Doctrine be wicked and abſurd in private Families, then is it much more ſo in Kingdoms; for certainly there is a more perfect Subjection due to a Soveraign Prince, than to a Father or Maſter; for he is more eminently the Miniſter of God, and acts by a more ſacred and inviolable Authority. And notwithſtanding what you have ſaid to the contrary, that the Precept given to Servants by St. *Peter* doth not concern Subjects, I think I can very well prove that it doth; as appears from the Example of Chriſt, which the Apoſtle there recommended to our imitation, who was the moſt innocent Perſon in the World, and yet ſuffered the moſt barbarous Uſage, not from the Hands of a private Maſter, but of the Supreme Powers. And therefore, when he commands, in the ſame Chapter, *to ſubmit to Governors, as to thoſe who are for the Puniſhment of evil Doers, and the praiſe of them that do well*; it is evident that he did not intend this as a Limitation of our Subjection, or as if we were not bound to be ſubject in other Caſes, ſince in the very ſame Chapter he requires *Subjection not only to the good and gentle Maſters, but alſo to the froward*, in imitation of the Example of our Lord, who ſuffered patiently under unjuſt and tyrannical Powers. I obſerve therefore, that the Apoſtle doth not alledge this as the reaſon of our Subjection; but as a Motive or Argument to reconcile us to the Practice of it. The reaſon of our Submiſſion to Princes is, that they are advanced by God, that they are his Miniſters, that thoſe who reſiſt them reſiſt the Ordinance of God; and therefore we muſt ſubmit for God's ſake, out of reverence to his Authority. But it is only an encouragement to Subjection, to conſider the great Advantages of Government, *That Rulers are not a Terror to good Works, but to the evil.* But tho' this Motive ſhould fail in ſome Inſtances, yet whilſt the reaſon of the Subjection laſts (and that can never fail while we own the Soveraign Authority of God) ſo long it is our Duty to be ſubject, whether our Prince do his Duty or not.

F. Altho' what you have now replied is no more, in effect, than a Repetition of what hath been ſaid before; yet I forgive it, ſince your Cauſe will not admit no other; nor can I ſee any reaſon why natural Judgments may be removed by Force or natural Means, but not Moral or Civil ones; unleſs you could alſo prove, that it is God's expreſs Command, that we may remove the one, but not the other; nor have you proved it otherwiſe than by telling me, that Princes are God's Ordinance, and are endued with irreſiſtible Power, all which hath been already conſidered, and I have already ſhewn you it is neither commanded by God, nor yet ordained by him for the common Good of Mankind. And tho' I own that Afflictions may ſometimes ſerve for a Puniſhment of a ſinful Nation; yet it is as likely that ſuch a great and laſting Puniſhment, as a mercileſs Tyrant, may as well bring the People to Repentance, and when they are ſufficiently amended, they may very well enjoy the Benefits of it; and they may as well expect that God will bleſs all lawful Means for that End, whereof I take Reſiſtance or Self-defence to be the Principal, ſince Miracles are ceaſed. And of this we have an Example in the ſecond of *Kings*, *chap.* 18. For tho' *Ahaz*, the Father of *Hezekiah*, had ſubmitted himſelf, and become Tributary to the King of *Aſſyria*; yet when *Hezekiah* his Son turned to the Lord, it is ſaid, that he was with him, and that he rebelled againſt the King of *Aſſyria*, and ſerved him not; and yet he was then as much ſubject to him, as *Jehoiachin* or *Zedekiah* were afterwards to *Nebuchadnezzar*. So that all that is new, in this Anſwer of yours, is only the fatal Conſequences that it would bring upon all Families in the State of Nature; for then (forſooth) Children and Servants might likewiſe pretend, that the Government of their Fathers and Maſters were ſo inſupportable, that it was no longer to be endured, and ſo might rebel againſt them and depoſe them, which doth by no means follow; for I have already proved at our firſt Converſation, that ſome ſort of Reſiſtance, for the preſervation of Life and Limb, may be lawful againſt the Outrages or Violence of a Father or Maſter of a Family; yet do I by no means allow that they ſhould reſiſt them for any other Correction or ſevere Uſage which they ſhall inflict upon them; ſince Servants or Slaves, whilſt they continue under their Maſters Power, can have no Liberty or Property of their own to defend; and a Son, whilſt he

remains part of his Father's Family, I grant, differs not from a Servant; ſo that all that ought to be done, either by Sons or Servants, in caſe the Government of their Father or Maſter grows ſo cruel and tyrannical as not to be endured, is to run away and leave the Family: And thus we read, that *Hagar*, upon the ſevere Uſage of *Sarah* her Miſtreſs, fled from her, nor was blamed by the Angel for ſo doing.

Nor is what you have now ſaid, to prove the Subjection of Servants and Slaves to be as abſolute the one as the other, at all convincing; for I have long ſince proved that a Family and a Kingdom are very different things; and that Oeconomical and Civil Power do not only differ *in Spiece*, but *in Genere* too. For tho' I grant, that Slavery might begin by Compact, as well as by War; yet Subjection to Civil Power could regularly commence by Compact only: And therefore ſince the natural State of Mankind is that of Freedom from Slavery, all Subjects are ſuppoſed to be in that State of Freedom, and to have a Right both to their Liberties and Properties; which, if the Supreme Powers go about forcibly to take away, they then ceaſe to be ſo, ſince they take away the main end of their Inſtitution, I mean, this of ſuch a People, who are properly Subjects, and not Slaves: For of thoſe who own themſelves to be Slaves to their Prince, I told you already, I would not take upon me to meddle; ſince I doubt whether ſuch an Empire can be called a Civil Government or not: So that for all that you have hitherto ſaid, I muſt ſtill believe St. *Peter* did not direct this Precept to Subjects, but to Servants under the Yoke, that is, to Slaves, ſuch as had no Property in any thing, nor Power over their own Perſons, but might be ſold and aſſign'd, with their Wives and Children, to whomſoever their Maſter pleaſed; which tho' not of divine Inſtitution, yet ſince it was ſo ordained by the Civil Laws of the Empire, neither Jeſus Chriſt nor yet his Apoſtles would make any Alteration in it; nor hath he thought fit to do ſo in any of thoſe things which we enjoy as our Civil or Natural Rights, by the Law of Nature, or the Municipial Laws of our Country; and therefore it is not true that there is as perfect a Subjection due to a Soveraign Prince as to a Maſter, unleſs the People of that Nation have made themſelves abſolute Slaves to him, inſtead of Subjects, which could never be but by their own Conſent. It is true, a Prince is more eminently the Miniſter of God, and acts by a more ſacred and inviolable Authority than a Maſter; yet doth it not therefore follow that he acts as God's Miniſter, or by his ſacred or inviolable Authority, when he deſtroys or enſlaves the Subjects: Nor can you ſay that God hath given him any Authority ſo to do. And as for the Example of Chriſt's Suffering, which you urge as a Reaſon of our abſolute Subjection to Princes, without any Reſiſtance, I have anſwered that already, and therefore need ſay no more to it; but do own, that in that great Point of ſuffering for Religion, when we are lawfully called thereunto, we are to follow his Example; yet doth it not prove that we are to ſuffer in all other Caſes whatſoever, concerning which he hath given us no expreſs Precept or Command.

M. I have ſomething more to ſay to you about this Matter of ſufferin g for Religion, but I ſhall defer it at preſent, and ſhall only now conſider the evil Conſequences of your Arguments for Reſiſtance of the Supreme Powers in any
B. P. P. §. 8. Caſe whatſoever; the Sum of which, if I can well remember, is to this Effect: Shall a Prince be free from all Correction till God Almighty is pleaſed to chaſtiſe him? Muſt I ſit ſtill, and ſuffer my Throat to be cut, my Eſtate ruined; and not dare in any Caſe to defend myſelf, till God is pleaſed to interpoſe; and that in an Age in which Miracles are ceaſed? God is for the moſt part pleaſed to reſpite the Puniſhment of Oppreſſors till the next World; and if I be ruined in this, what comfort is it to me or mine, that the Injury ſhall be puniſhed,
Ibid. §. 9. when I ſhall reap no advantage by it? Now ſuppoſe the Subjects of ſuch a Prince ſhould ſucceed in their Rebellion, and prevail againſt him, they muſt then ſubmit to another Prince, of whom they have no more aſſurance they ſhall be better treated; and if they ſet up many, they are all Men, and ſubject to be corrupted by Power and Greatneſs; and in an Anarchy every Man will become a Tyrant to his Neighbours. So that this Doctrine of curbing and reſiſting Princes, is calculated for the ruin of Mankind; and tends to no body's good but theirs, who deſign thereby to gain a Power of doing to others what they pretend to fear. And when all is done, the Puniſhment of Princes, who abuſe their

Power,

Power, muſt be left to God Almighty, who only can and will puniſh his own Miniſters.

Now ſuppoſe all this were juſt as it is ſtated, if the Injuries a Man ſuffer are inſupportable, under any Government he may petition for relief, and in all probability find it; if not, he may fly into another Country for ſuccour; if he cannot do that neither, he will ſcarce be able to reſiſt: So that if it were never ſo juſtifiable, it could be of no uſe to any ſuch miſerable Man; for no Prince, though never ſo ill natured, will attempt any ſuch thing againſt any ſuch number of Men, as are in a Capacity of revenging the Wrong done them when they will, only out of hopes they will not, becauſe they ought not. Nor will the Hiſtories of all Ages put together afford one Inſtance of a Monarch, that ever injured any Man at this rate, whom he believed able (if willing) to revenge the Wrong, but that he took care as far as he could to prevent it; and either to take him out of the way, or to put him out of a poſſibility of a Retaliation. So that all ſuch diſcontented fretful Rhetorick is of no uſe in any ſuch Caſe.

But then, on the contrary, if every Ambitious and Factious Man might be left at liberty to inſinuate into the Rabble, and the great and little Vulgar, that Princes are to be puniſhed when they do amiſs; that they are bound to Act according to Laws, and to their Oaths; and if they do otherwiſe, are preſently to be treated as Tyrants, and the common Enemies of Mankind; that it is lawful for a Man to defend himſelf againſt the Injuſtice and Oppreſſion of his Prince, *&c.* This can only ſerve to fill the World with Rebellions, Wars and Confuſions, in which more thouſands of Men and Eſtates muſt of neceſſity be ruined, and Wives raviſhed and murdered, in the ſpace of a few Days, than can be deſtroyed by the worſt Tyrant that ever trod upon the Earth, amongſt his own Subjects, in the ſpace of many Years, or of his whole Life.

F. I perceieve you think this place of Scripture will not carry you through; and therefore you would fain confute my Arguments by ridiculing them. But in anſwer to the Expedients you have now propoſed, I think I may make this return. Firſt, as for Petitioning when a Government grows inſupportable; ſuppoſe then, the Prince declares he will not be petitioned in this Matter; but as the *French* King lately did, when the Proteſtants would have petitioned him againſt the Violation of the Edict of *Nants*, will not hear or receive them; or ſuppoſe he lays any Man by the Heels, that ſhall offer never ſo humbly to petition him, either in his own, or the Peoples behalf, as King *James* lately ſerved the Biſhops; then this Expedient can ſignify nothing. As for the next, flying into another Country for Succour, that is a very ſorry Comfort, that a Man muſt be forced to go and beg his Bread in a ſtrange Land; and whatever this may be a Duty for private or ſingle Perſons, yet it cannot extend to a whole Nation; ſince if all the People ſhould go away, the Commonwealth or Civil Society would be diſſolved; and farther perhaps, as now in *France*, and in all Tyrannical Governments, it is commonly practiſed, the Prince ſhould forbid his Subjects to go out of his Kingdom upon Pain of Death, or being ſent to the Gallies; then I think this Expedient would ſignify nothing neither. But now, if nothing elſe will do, you ſay Reſiſtance can be of no uſe for ſuch miſerable People, becauſe a Prince will not dare to attempt any ſuch thing againſt ſuch a number of Men as are in a capacity of revenging the Wrongs done them, where they will only out of hopes, that they will not, becauſe they ought not to do it. I grant indeed, that never any Tyrant, when he went about thus to oppreſs his People, deſigned they ſhould be in a capacity to revenge the Wrong he did them when they would: And therefore ſuch Tyrants take very great care by Guards and Standing Armies to prevent it. But yet I can ſhew you a Prince, who very lately received ſuch Encouragement by the Writing and Preaching of our High Clergy, that he ſeem'd reſolved to bring in Popery and Arbitrary Government upon us chiefly out of hopes that the People *would not*, becauſe (as he thought) they *ought not* to reſiſt: And tho' I alſo grant, that few Monarchs injure particular Men ſo much, but that, if they believe them able to revenge the Wrong, they will take care as far as they can to prevent it; yet this ſignifies nothing, if once a whole Nation comes to be oppreſs'd, and diſguſted againſt the Government: For if ſuch a Prince or Commonwealth have not the Aſſiſtance of ſome other Power, either his own Standing Army or his Neighbours, his Authority would ſoon be at an end. Thus we read

of

of the Maſſacre and Expulſion of the *French* out of *Sicily*; it was done in the twinkling of an eye, and before thoſe in Power had the leaſt Suſpicion of it. So likewiſe in the late Revolt of the *Portugueſe* from the King of *Spain*, his Government was at an end in little more than a Day's time; and that Nation will tell tell you, that they look upon the Benefit of being governed by a Prince of their own, and enjoying their own Laws, as very well worth that Expence of Blood and Treaſure they were at to obtain it. To conclude, I do not ſpeak this to encourage the Rabble, or *great* and *little Vulgar* (as you call them) to take Arms, and puniſh Princes when they do amiſs: Nor have I at all aſſerted, that Princes may be puniſhed by their Subjects, unleſs you can prove to me, that every one who reſiſts the Violence of another is his Lord and Maſter. Neither do I maintain, that tho' Princes are bound to act according to Laws, and to their Oaths, yet if they do otherwiſe they are preſently to be treated as Tyrants, and the common Enemies of Mankind; or that it is lawful for every private Man to defend himſelf againſt the Injuſtice and Oppreſſion of his Prince. I grant, ſuch Doctrine would ſerve to fill the World with Rebellions, Wars, and Confuſions, and may produce all thoſe dreadful Conſequences you have here ſet forth.

But on the other ſide, under ſuch a Tyranny as where the whole People, or the major Part of them, ſhall happen to be aſſaulted, enſlaved, and oppreſſed to that degree, that no Man can tell when he is ſafe; I ſay, in ſuch caſes a Tyrant may deſtroy more thouſands of Men, raviſh more Women, and ruin more Families and Eſtates, than it is likely to be done by the higheſt Reſiſtance the People can make againſt him: Since they are mad if ever they make this Reſiſtance, unleſs they are alſo morally ſure, either by their own Strength or the Aſſiſtance of their Neighbours, of ſucceeding in the Attempt.

Nor do the Conſequences of ſuch Reſiſtance but rarely fall out in the manner you ſuppoſe. For it ſeldom happens but that the new Prince, to whom the People ſubmit themſelves, will (being warned by the Example of his Predeceſſor) take care to govern with greater Mercy and Moderation; and it is much more unlikely, that if they chuſe or ſet up many Repreſentatives out of their own Body, that they will be preſently corrupted by Power and Greatneſs thus to oppreſs the People; and laſtly, it is much leſs probable, that the People can continue long in an Anarchy, without any Government at all. So that, to conclude, this Doctrine of reſiſting of Princes, or other Supreme Powers, in Caſes of extremity, is ſo far from tending to the Ruin of Mankind, that I cannot ſee how they can be ſafe without it; And tho' the Puniſhment of Princes, who abuſe their Power, may be left to God Almighty, yet I am confident the reſiſting of thoſe, who tho' they have the Power of the Sword in their hand, yet act as none of God's Miniſters, is neither contrary to the Laws of God nor Nature.

M. I perceive you want Teſtimonies out of Scripture to juſtify your Doctrine of Reſiſtance, and therefore you are, when preſſed by theſe, forced to fly to your old Refuge of Self-defence by the Law of Nature, in which tho' I have been forced to follow you, and quit the Method I propoſed to my ſelf; yet I would have you to know, it is not for want of more Texts of Scripture, and therefore I muſt ſtill farther inforce the true Senſe of that Place of the firſt of St. *Peter*: *Submit your*
Chap. 2. 13, *ſelves to every Ordinance of Man for the Lord's ſake, whether it be to the King as Supreme,*
&c. *or unto Governors, as to them that are ſent by him, for the Puniſhment of Evil-doers, and*
S. C. R. ch. *for the praiſe of them that do well.* "For this is the very ſame Doctrine which St.
5. p. 141. " *Paul* taught the *Romans*, *Let every Soul be ſubject to the Higher Powers.* For the
Ibid. p. 142. " ſame Word is uſed in the Original, ὑποτάγητε and ὑποτασσέσθω; and therefore " to ſubmit and to be ſubject is the ſame thing, which, as St. *Paul* tells us, ſignifies *Non-reſiſtance*: Only as St. *Paul* ſpeaks of not reſiſting the Higher Powers, " that is, Emperors and Sovereign Princes, he therein includes all thoſe who act by " their Authority; and St. *Peter*, to prevent all Cavils and Exceptions, diſtinctly " mentions both, that we muſt ſubmit to all Humane Power and Authority, not " only to the King as Supreme, that is, in St. *Paul*'s Phraſe, to the Higher Pow- " ers, to all Sovereign Princes, who are inveſted with the Supreme Authority, " but alſo to thoſe who are *ſent by him*, who receive their Authority and Com- " miſſion from the Sovereign Prince.

F. You may ſpare your Pains for making ſo many Explanations on this Text; for I have already granted, that all due Submiſſion is to be given, not only to the Supreme Powers, but alſo to all thoſe who are put in Authority under him

them,

them, and that *not only for Wrath, but Conſcience ſake*; yet is this place to be underſtood in the ſame Senſe as the former, that is, as far as they make uſe of this Power for the great Ends of Government, (*viz.*) the Good and Preſervation of the People, and not for their Ruin and Deſtruction, by taking away their Lives, Liberties and Properties at their pleaſure. So that this Precept is to be underſtood, according to the Reaſon which both St. *Peter* and St. *Paul* give for this Submiſſion, becauſe *Rulers are not a Terror to good Works, but to the evil*; and becauſe *ſuch Governors are for the puniſhment of Evil-doers, and for the praiſe of them that do well*: And even a Government, where a Heathen Prince hath ſuch Supreme Power, may, and doth moſt commonly, in reſpect to moſt of its Subjects, give more Countenance and Encouragement to good Works than bad ones; and therefore Obedience to ſuch a ſort of Governors is not only lawful, but a Duty; nay, though through Ignorance and Malice they might perſecute the true Religion. For I have already proved, that at the time of Writing of theſe Epiſtles there was no actual Perſecution begun by the *Roman* Emperors againſt the Chriſtians; and though they did afterwards perſecute them, yet even ſuch as did ſo, being commonly Men of good Morals, and having much of Goodneſs, Juſtice and Prudence in their Natures (ſuch as was *Trajan*, and the two *Antonini*'s), they would not fail extremely to encourage the Practice of ſuch, and other Virtues by their Examples, and by good Laws preſerve their Subjects from the Miſchiefs of Immorality, and keep them in Order, Peace and Sobriety. But is it ſo when Tyrants (be they Uſurpers or not) not only govern contrary to, but alſo ſubvert all the Ends of Government?

M. If this be the Senſe you put upon this place, I think I ſhall eaſily ſhew you not only the Abſurdity, but Perniciouſneſs of this Interpretation, which indeed doth undermine all that Obedience and Subjection that is due from Subjects to their Sovereigns, unleſs they rule well, that is, according to their Humours or Fancies. Now, I pray, "conſider whether theſe great Apoſtles intended "to oblige the Chriſtians of that Age to yield Obedience to thoſe Powers, "which then governed the World. If they d' (as I think no Man will be "ſo hardy as to ſay, that they did not) then it will be proper to inquire whe- "ther what they here affirm, and aſſign as the Reaſon of their Subjection, *That "Rulers are not a Terror to good Works, but to the evil, were true of the then* Roman "*Emperors and Governors, or not.* If it were true, then I believe it will hold "true of all Kings in all Ages of the World; for there cannot well be greater "Tyrants than the *Roman* Emperors were at this Time: And ſo this will prove "an eternal Reaſon why we ſhould be ſubject to Princes, notwithſtanding the "many Faults and Miſcarriages of their Government. And if it were not true, "it is very ſtrange, that two ſuch great Apoſtles ſhould uſe ſuch an Argument "to perſwade Chriſtians to ſubmit to the Powers as only proved the quite "contrary; that they ought not to be ſubject to the preſent Powers, becauſe "they were unjuſt and tyrannical; and which indeed, in Contradiction to the "Original Deſign and Inſtitution of Civil Power, were a Terror to good Works, "and not to the evil." *S. C. R. p.* 149, 150.

The Chriſtians were at this time actually perſecuted by the *Jews* in *Paleſtine*, and if they were not then alſo perſecuted by the Emperors, yet it was that which they might daily expect, conſidering their extraordinary Wickedneſs and Cruelty: And yet the Apoſtle exhorts them not to *reſiſt ſuch Powers*; becauſe they were not, (that is, ſhould not be) *a Terror to good Works, but to the evil.* "If by this "he only means that they ſhould be ſubject to them, while they encouraged "Virtue and virtuous Men, but might rebel againſt them when they did the "contrary; how could the Chriſtians of thoſe Days think themſelves obliged "by this to ſubmit to the higher Powers? *Ibid.*

"For this was not their Caſe, they ſuffered for Righteouſneſs ſake; the Su- "preme Powers were a Terror to them, though they were innocent; though "they could not charge them either with breaking the Laws of God or Men: "And therefore, upon your Principles they were not bound to ſubmit to them "whenever they could find it ſafe to *reſiſt*. So that either *you* put a falſe Com- "ment upon the Text, or while the Apoſtle undertakes to deter them from "Reſiſtance, he urges ſuch an Argument as was proper only to perſuade them "to rebel."

F. Had you been pleaſed to have minded more attentively what I ſaid laſt, you would not have thus miſrepreſented my Senſe: For I have already proved, that there was no Perſecution in the *Roman* Empire againſt the Chriſtians when thoſe Epiſtles were written, nor for many Years after; And I have alſo granted, that if the Emperors had ſo perſecuted them, they ought *not* to have *reſiſted*. And therefore, by good Works, and Evil-doers, *&c.* in both thoſe Texts of St. *Peter* and St. *Paul*, is not be underſtood, only believing in Chriſt, or behaving themſelves as became innocent Chriſtians, but in general that at that time when the Apoſtles wrote theſe Epiſtles under *Claudius*, and the beginning of *Nero*, (and indeed through his whole Reign where he governed by his Deputies) the Supreme Power was then really a Terror to evil Works, that is, to all Offences againſt good Manners, and the publick Peace of the Commonwealth, and were alſo a Puniſhment for Evil-doers; that is, thoſe that did tranſgreſs againſt the publick Laws ordained for the reſtraining Men from committing any ſort of publick Wickedneſs or Immorality. So that I own that neither the Heathens, nor the Chriſtians, had then any Reaſon to take Arms or reſiſt the Supreme Power at this time.

But admit there had been at that time great Miſcarriages and Abuſes committed under their Government, and that good Men had been oftentimes puniſhed, and evil ones rewarded, and the ends of Government to ſome degree perverted; eſpecially at *Rome*, where the Emperors took a Liberty of doing many unjuſt and tyrannical Actions: Yet I have no where (that I know of) affirmed, that Princes ought to be reſiſted only for being evil, or wicked; or that all the evil Actions and Miſ-government of Princes, or their ſubordinate Miniſters, ought to be reſiſted, much leſs puniſh'd, by the People: But I have all along
S.C.R. p. 153. aſſerted the contrary; for I own, "that no humane Government can be ſo exact "and perfect, but it may be guilty of Miſcarriages." Good Men may ſuffer, and bad Men may flouriſh under a virtuous Prince, much more under thoſe that are themſelves wicked and unjuſt. And there are many Degrees of evil Government and Tyranny, ſome of which may conſiſt well enough with the common Safety of the People, which was the Condition of moſt of the Subjects of the *Roman* Empire under the Reigns of *Claudius* and *Nero*; ſince they did then enjoy the Protection of the Commonwealth, and all the Civil Rights of Subjects. And therefore you very much miſtake me in ſuppoſing that I maintain we are only bound to be ſubject to thoſe Supreme Powers, who rule well, or who puniſh Wickedneſs, and reward Virtue; ſince I grant this was ſcarce ever performed exactly, even under the moſt regular Governments: Yet there is a great deal of difference between bearing with the common Infirmities of all Governments, and ſuch intolerable Violences that diſſolve the Government itſelf, as by making War upon the People, and invading their Civil Liberty and Property. As for Example: No Man doubts, but the King may pardon a Robber, or a Murderer; but if, inſtead of hanging, he ſhould pardon all Thieves and Murderers that ſhould rob or murder in a Year or two together, and ſhould likewiſe *liſt* them in his *Guards* to kill and rob whom they pleaſed, provided he had a *ſhare* of the *Booty*; I would very fain know of you, or any other reaſonable Man, whether the People were bound to bear it; and whether they might not reſiſt them, though they had the King's Commiſſion for ſo doing?

To conclude: When the Apoſtle here ſays, that *Rulers are not a Terror to good Works, but to the evil; and that they are for the puniſhment of Evil-doers, and for the praiſe of them that do well*; the Apoſtle only means in general, the great Advantages of Civil Governmenr for the Suppreſſion of Wickedneſs, and Encouragement of Virtue, which is the true End, and the beſt Improvement of humane Power. But this alſo is in great meaſure obtain'd under evil, and (to ſome degree) tyrannical Princes; and therefore this Argument for Subjection is good, even under a Tyrant. Publick Juſtice was adminiſtred under the Government of *Nero*, and good Men were then often rewarded, and bad Men puniſhed. And though Juſtice be not ſo equally, and ſo univerſally adminiſtred under an evil Prince, as under a good one; or, though ſuch a Tyrant may oppreſs many of his Subjects, and be the occaſion of divers Calamities, yet whilſt the main Ends of Civil Government are maintained, it lays a ſufficient Reſtraint upon the unruly Luſts and Paſſions of Men, and gives great Security to the Juſt and Innocent.

Innocent. And therefore, good Men are concerned to promote the Peace and Security of Civil Government, though the Prince be in ſome degree a Tyrant; for there is more Security to be had under ſuch a Tyrant, than in a Civil War, or Anarchy.

In ordinary Caſes it is very poſſible for private good Men to live eaſily and tolerably under a very bad Prince; and though it ſhould be their Lot to ſuffer, yet ſince the Peace and Quiet of humane Societies is in itſelf ſo great a Bleſſing, and the publick Good may be better conſulted by the Preſervation of Government, than by Reſiſtance; it becomes every good Man rather to ſuffer patiently under ſuch a Tyrant, than to ſhake and unſettle Civil Government, and diſturb the natural Courſe of Juſtice by Sedition and Tumults, for the private Intereſt of himſelf, or a few other Men.

Yet all this is to be underſtood of ſuch Degrees of Tyranny, or evil Government, as may conſiſt with the main Ends of a Civil Society, or Commonwealth; and as far as the publick Good of the People may be better conſulted and preſerved by the Preſervation, than Reſiſtance of it. And as I grant it to be every Man's Duty patiently to ſuffer many Injuries and Abuſes, rather than to make any publick Diſturbance; ſo on the other ſide, when the main Ends of Civil Government, *viz.* the common Preſervation of the Peoples Liberties and Properties, are actually, or about to be deſtroyed, I think every honeſt Man, that his careful of his own, and his Poſterity's well-being and Happineſs, may, nay, ought (if no other Remedy can be had) to make Reſiſtance, not for the Deſtruction, but Preſervation of Civil Government, which I look upon as good as diſſolved, before ſuch Reſiſtance can be lawful.

M. I muſt confeſs your Doctrine, as you have explained it, is not ſo bad as I ſuppoſed at the firſt hearing; but if People may never reſiſt 'till things come to ſuch a State, as that, by a general Invaſion of Mens Lives, Liberties and Properties, the Civil Government be in a manner deſtroyed (as you ſuppoſe), the People may ſtay long enough before ever they ſhall be in a Condition to make this Reſiſtance. For in all the ſmall Obſervations that I have made out Hiſtory, I never could find the People generally reduced to ſo ſad a Caſe as this you have put: Moſt of the Rebellions, and Alterations of Government that I have read of, having begun from a few tyrannical Actions committed upon the Perſons or Eſtates of ſome great and powerful Men, who being beloved by the People, were able to ſtir them up to revenge their particular Injuries. Thus one ſingle Act of Luſt in the younger *Tarquin's* raviſhing *Lucretia*, gave occaſion to *Brutus*, and her Husband *Colatine*, to take Arms againſt the King his Father, and by expelling him and his Family to ſet up a Commonwealth. And therefore, ſince this Caſe of ſuch an extreme intolerable Tyranny, as you mention, can never, or at leaſt very rarely happen, I think I may ſtill maintain what I firſt affirmed, that it is much better to put this Miſchief to the venture, and ſuffer all the Inconveniencies that may happen from it, than by allowing the People to be their own *Judges*, when the Government proves inſupportable, to give them a Right of *judging* and *reſiſting* whenever they ſhall pretend that it is ſo; which they may make uſe of not to ſecure their own Liberties and Eſtates, but to gratify their own Humours, or elſe the Ambition or Revenge of great and factious Men.

" So that unleſs there is ſome Power that is irreſiſtable, from whence there lies *S. C. R. p.* " no Appeal, it is impoſſible for any Goverment to ſubſiſt. And though it *160.* " is not neceſſary that this Power ſhould be always in the Hands of one Man, *Ibid. p. 161.* " yet if God hath placed it in the Hands of a Prince, there it muſt be irreſiſt- " able too, however he uſes it. For if once it be made lawful to reſiſt the Su- " preme Power where ever it is placed, you diſſolve humane Societies, or at leaſt " expoſe them to perpetual Diſorders and Convulſions. Factious and ambi- " tious Men will ſtill find Pretences to reſiſt good Princes as well as bad, and " no Government can be any longer ſecure than whilſt ill-deſigning Men want " Power to reſiſt.

" Now then to paſs a true Judgment on this whole Matter, we muſt not only " conſider what preſent Inconveniencies we may ſuffer from the irreſiſtable Power " of the worſt Tyrant, but alſo what an irreparable Miſchief it is for ever to " unſettle the Foundations of Government. We muſt conſider whether Civil " Government be the greater Bleſſing to Mankind, or a Tyrant the greater

" Curſe; whether it be more deſireable to endure the Inſolence and Injuſtice of " the *greateſt Tyrant*, when the Power falls into ſuch a Hand; or for ever to be " deprived of the Security of Government, and the Bleſſings of Peace and Or- " der. And therefore, there is great Reaſon why God ſhould ſo ſeverely for- " bid the Reſiſtance of all Princes, though the cruelleſt Tyrants you can ima- " gine; and why we ſhould quietly and contentedly ſubmit to this Divine Ap- " pointment, becauſe the Reſiſtance of the Supreme Powers (were it once al- " lowed by God) would weaken the Authority of all humane Governments, " and expoſe them to the Rage and Frenzy of ambitious and diſcontented " States Men, or wild Enthuſiaſts. And this, I think, is a ſufficient Anſwer to " this Pretence, that the Apoſtle limits our Subjection to Princes to the regular " Exerciſe of their Authority."

F. I ſee we are even come where we ſet out, to the Neceſſity of an irreſiſtable Power, and the Miſchief that muſt follow, if the People ever judge for themſelves; which indeed is but the ſame Argument in Politicks which the Church of *Rome* makes uſe of for the Neceſſity of an infallible Judge in Spirituals; becauſe otherwiſe, if the People judge for themſelves in Matters of Religion, there would nothing follow but Anarchy and Confuſion in the Church; and that there would be as many Religions as there are Men. And ſo you likewiſe urge, that if the People may ever once come to judge when they are aſſaulted, enſlaved or oppreſs'd, and ſhould have a Right of making Reſiſtance, nothing but Anarchy and Confuſion muſt follow in the Commonwealth. And truly I think the Argument is as good for the one as the other: And as I hope we may be always good *Orthodox Chriſtians* without ſuch an infallible Judge in matters of Faith, ſo I think we may be loyal Subjects to our Prince without inveſting him with an irreſiſtable Power of doing with us what ever he hath a mind to.

But ſince you have only repeated what you have ſaid at our laſt Meeting, when we firſt began to debate this Queſtion, ſo I muſt beg your pardon, if I refreſh your Memory, and again repeat my Anſwers. In the firſt place, I deny that it muſt follow, that if once it be made lawful to reſiſt the Supreme Power where ever placed, this muſt diſſolve Civil Societies, or expoſe them to perpetual Diſorder; becauſe (forſooth) ſome factious and ambitious Men will find Pretences to reſiſt good Princes as well as bad. For firſt I have all along ſuppoſed the Commonwealth Civil Society as good as diſſolved, before ſuch Reſiſtance is lawful: And therefore, the Convulſions or Diſorders of a Civil War can ſcarce be worſe than ſuch a State; and until the People are under this Condition, I grant factious and ambitious Men may make Pretences to reſiſt good Princes, as well as bad, and may find ſome Followers as wicked as themſelves to take their part. Yet this Infection ſeldom or never ſeizeth upon a whole Nation, who hath always Power and Affection enough for the Supreme Powers to join with them to ſuppreſs ſuch Rebels. I grant, we ought always to conſider whether Civil Government be the greater Bleſſing to Mankind, or a Tyrant the greater Curſe; and I do never ſuppoſe ſuch Reſiſtance to be lawful, but when the Power falls into ſuch Hands, that tho' they may call themſelves a *Civil Government*, yet the People are almoſt as totally deprived of all that Security, and thoſe Bleſſings of Peace and Order, which they may juſtly expect from it, as if they were in a State of War. And therefore, as you ſuppoſe that God Almighty forbids the Reſiſtance of the moſt cruel Tyrants, becauſe this Reſiſtance, were it once allowed, by giving the People a Power of judging, would weaken the Authority of humane Governments, and expoſe them to the Rage and Frenzy of ambitious and diſcontented States Men, or wild Enthuſiaſts: And this you think a ſufficient Anſwer.

So on the other ſide; if this Reſiſtance be in no caſe lawful, though in never ſo great Extremities, and that the People muſt not judge when they are ſo cruelly uſed, as that it is no longer to be endured, not only the Perſons of Princes muſt be ſacred and irreſiſtable, but alſo all thoſe Inſtruments of Tyranny whom they may hire and employ to that purpoſe; by which means all Government whatſoever will not only be abſolute, but arbitrary, and without any ſufficient Obligations to either Mercy, Juſtice and the Common Good, than what the tyrannical Will or Humour of one or more Men ſhall pleaſe to allow. So

that

that the Lives, Liberties and Estates of a free People or Nation shall be in as bad a Condition as if they were Slaves, if all means of defending themselves by their own Resistance, or joining with those that would assist them, be wholly denied them. And whether God can ever be the Author of such an Institution, I appeal to your own Reason to judge, when you are in a more sedate and equal Temper.

M. I see 'tis in vain to argue this Matter any longer with you; and therefore I must tell you, that I cannot but look upon these Doctrines of *Passive Obedience* and *Non-resistance*, as true *Christian Doctrines*; since the ancient Fathers of the Church and Primitive Christians did always both believe, and practise them; and in Imitation of whom our own Church of *England*, (which, I think, of any in the World come neareſt to the Primitive) doth likewise maintain it in her Thirty Nine Articles, Canons and Homilies; whereas you can shew me no express Text of Scripture, nor Testimonies of the Fathers, nor Examples of the Primitive Christians to justify this Resistance; which whenever you can do, I shall be of your Opinion: And if you doubt the Truth of what I say, I have here by me the Lord Primate *Usher's* Book of *the Power of the Prince, and Obedience of the Subject*; which you may, if you please, take home with you, and consult at leisure; in which I doubt not but you will meet with full Satisfaction in this matter.

F. I have already proved at our last Meeting, that Resistance for Self-defence against those who have the Power of the Sword, is a Right of Nature conferred by God on all Mankind: And unless you can shew me an express place of Scripture, which takes it quite away, I think I may very well maintain, that it is still left entire to us, and is not abrogated by the Law of the Gospel; and that it was lawful before our Saviour's Coming into the World, I have proved by those defensive Arms made use of by *David*, and the *Maccabees*. And as for the Testimonies of the Fathers, and the Practice of the Primitive Christians, of which the Reverend Primate hath made so ample a Collection in that Treatise you now shew me; I thank you for your *kind Offer* of it, but I do not now need it: For since I began to consider this Controversy with you, I have carefully read over that Treatise, and I cannot find that this vast Collection out of Prophane as well as Ecclesiastical Writers, will prove any more, than those Principles, which I own to be true, and yet will not impugne this I here defend.

In the first part of this Discourse it is proved by Scripture, as well as other Testimonies, that the Authority of all Sovereign Powers is from God, which I also allow; yet doth it not hinder but that the Consent and Submission of the People is a necessary Means or Condition of conveying this Authority, when God doth not please to make or nominate Kings himself. 2*dly*, That the Persons as well as Power of Sovereign, though wicked Princes, is also sacred and irresistable; yet this is to be understood whilst they continue to act towards their whole People as the Ordinance of God, and by vertue of that Divine Commission which they have received from him.

In the second Part of this Discourse it is proved from Scripture, Testimonies of the Fathers and other Authors, that particular Subjects are bound to obey the Supreme Powers in all lawful and indifferent things, or else to submit and suffer the Punishment in case of their unlawful Laws or Commands. As also to bear with any Violence and Injury that may be offered to them, rather than to disturb the publick Peace and Civil Government of the Commonwealth, which I also allow.

2*dly*. That in the Time of the Primitive Church, and before the Christian Religion was settled by Law, and become part of the Civil Constitution of whole Kingdoms and States, it was unlawful to resist the Supreme Powers in case of Persecution, though to Death it self, for the Testimony of Christian Religion; which I have also allowed through this whole Conversation. Yet none of these Quotations, as I can see, do reach the matter in Controversy between us, and assert it expresly to be absolutely unlawful for the whole People of any Kingdom or Nation to make use of defensive Arms, and resist the intolerable Violence and Tyranny of the Supreme Powers, if they shall happen to make War upon their People, and go about to take away and subvert the main Ends of all Government, *viz.* the Preservation of Mens Lives, Liberties and

Civil Properties. Neither do they any where assert, that in limited or mixt Governments, such as most of those now in *Europe*, where the People, by the Fundamental Constitutions of the Government, or the after Concessions of Princes, restraining their own absolute Power, enjoy divers Privileges and Liberties, unknown to those who live under absolute Monarchies: That such a People may not, upon the manifest Invasion of such legal Right by force, resist and defend themselves and their just Rights, against the violent Invasion of the Prince.

M. I cannot deny but you have fairly enough represented the Chief Heads, or Principles, which the Reverend Primate undertakes to prove in this excellent Treatise: And I think you have yourself granted enough to confute all you have already said. For in the first place, if it be unlawful for every particular private Subject to resist the Supreme Powers, it will likewise follow, that it will be also unlawful for a whole Nation: For a whole Nation is only a System or Collection of particular Persons, and Universals have no real Being in Nature; but only in our Ideas: So that if it be unlawful for every particular Person to resist and defend himself in case he is injur'd and oppress'd, it must be also unlawful for a whole People, which consists of Individuals, to make such Resistance; and it is a Rule in Logick, that *nothing can be affirmed of Individuals, which may not also be affirmed of the whole Species.*

So likewise if you grant, That the Primitive Christians ought not to have resisted the Supreme Powers in case of Persecution for Religion, I think it will likewise as well prove, that they ought not to resist upon any *account whatsoever*, since certainly there cannot be greater Wrongs or Violences committed in the World by Supreme Powers, than to allow them an Irresistable Power of putting those to Death that bear witness to the Truth of the Gospel, since a whole Nation may be as well thereby destroyed if they prove firm to the Christian Religion, and that the Prince continue obstinately cruel. And you might as well argue, that patient Suffering without Resistance ought not to be exercised in this case; because it is destructive to Mankind, and the Quiet of a Civil Society, as to argue from the same Reason, that a whole Nation is not obliged to suffer without any Resistance; when their Lives, Liberties and Properties, are invaded by the Supreme Powers. So that if the Primitive Christians might not resist the *Roman* Emperors, when they made so great a part of the People, and were so vast a Multitude in the *Roman* Empire in the time of *Tertullian*, as that he tells the Emperor *Severus*, in his Apology for the Christians, to this effect; "That had they a mind to pro-
" fess open Hostility, and to practise secret Revenge, could they want Numbers
" of Men, or Force of Arms? Are the *Moors*, the *Marcomans*, or the *Parthians*
" themselves, or any one particular Nation whatsoever, more in number than
" they, who are spread over the whole World? They are indeed not of your
" way, and yet they have filled all the Places you have; your Cities, Islands,
" Castles, Towns, Assemblies; your very Tents, Tribes and Wards, yea the Pal-
" lace, Senate, and Judgment-Seat.

Nor need I to mention at large the famous Story of the *Thebæan* Legion, who all of them suffer'd Death rather than they would either Sacrifice to Idols, or resist the Emperor's Forces, tho' they were between Six or seven thousand Men, and might have sold their Lives dear enough: And if an Emperor may murder so many thousands without any Resistance, I see no reason why he may not put a whole Nation of Christians to Death by the same reason.

Nor will one of your Reasons which you bring for it, signify any thing, that the Christians were to suffer without Resistance, because *Paganism* was then the Religion establish'd by the Law of the Empire; for if a *Municipal Law*, as this was, ought to be over-ruled by the *Natural Law* of Self-defence, when they happen to clash, then the Christians who lived under the Heathen Emperors, might lawfully have taken up Arms against the Government, because they were deprived of their Lives and Fortunes against all Equity and Humanity: For to persecute Men so remarkably regular and peaceable, both in their Principles and Practices, is as manifest a Violation of the Law of Nature, as is possible. And if it was lawful for them to resist, then they seem bound in Conscience to do it whenever they had a Probability of prevailing: For without doubt it's a great Fault for a Man to *throw away his Life, impoverish his Family, and encourage Tyranny, when he hath a fair remedy at hand.*

F. If you had a little better remembred what I have already ſaid on this Subject, you might have ſpared theſe Objections; for as to the firſt of them, it is rather a Logical Fallacy, than a true Anſwer: For in the firſt place, I have all along aſſerted, that no Man ought to give up his Right of Self-defence, but in order to a greater Good, (*viz.* the Publick Peace, and Preſervation of the Commonwealth.) And therefore Dr. *Fern*, and others of your Opinion, do acknowledge, that *David* might have made uſe of defenſive Arms to defend himſelf againſt thoſe Cut-throats that *Saul* ſent to take away his Life, though he might not have reſiſted *Saul*'s own Perſon; and you yourſelf have already granted, that no *Man can want Authority to defend his Life againſt him that hath no Authority to take it away.* So that if this Law of Self-defence is ſometimes ſuſpended, it is only in Submiſſion to a higher Law of preſerving the publick Peace of the Commonwealth, or Civil Society, which being once broken and gone by a general Violence upon all Mens Lives, Liberties and Properties of that Nation or Kingdom, that Obligation of maintaining the publick Peace being taken away, every Man's Natural Right of not only defending himſelf, but his innocent Neighbour, again takes place. And therefore your Logical Maxim, that nothing can be affirmed of Individuals, which may not be affirmed of the whole Species, ſignifieth nothing in this matter; for every Individual had before potentially a Right of Self-defence, tho' they were under an Obligation not to reduce it into Act, till the Bonds of that Civil Society were diſſolved; and then it is true, they do not then reſiſt to maintain that Civil Government which is already gone, but to get out of a *State of Nature*, and ſet up a new one as ſoon as they can.

But as to your ſecond Objection, which I confeſs hath more weight in it than the former, I ſhall make this Anſwer; That you yourſelf have given a ſufficient Reaſon why a whole Nation, or Church, that profeſſes the Chriſtian Religion, cannot be deſtroyed by all the Malice and Perſecution that can fall upon it by perſecuting Monarchs; for you tell us, that it is the ſpecial Privilege of the Chriſtian Church, above the reſt of Mankind, that they are *God's peculiar Care and Charge*; and that he doth not permit any Suffering, or Perſecutions, to befal them, but what he himſelf orders and appoints: And that it is a great Happineſs to have our Condition immediately allotted by God. So that it ſeems it cannot be in the Power of the cruelleſt Tyrant utterly to deſtroy Chriſtianity, in any Country where it is truly taught, by all the Perſecution that he can uſe. This was the State of *Chriſtian Religion* whilſt it was in its Infancy; and in which we may obſerve more particular Declarations of God's Providence by Miracles, and the Divine Inſpirations of his Holy Spirit, than after it was grown up, and that all the World became Chriſtians. In its Infancy, 'tis plain that Princes could could not deſtroy it, becauſe it was ſupported by Miracles, and ſupernatural Means; but in the other State, when Chriſtianity was once grown up, ſettled and able to ſhift for itſelf, by being made the Religion of the Empire, and the greateſt part of Mankind embracing it in thoſe and other Countries, Princes then could not deſtroy it if they would, becauſe their Subjects had then a Right to it, and a Property in it, as much as they had to any thing elſe they enjoy'd, and conſequently might be preſerved by the ſame Humane Means. Thus during the State of the *Jewiſh* Church in the Wilderneſs, and for ſome time in the Land of *Canaan*, we find the Children of *Iſrael* fed, and deliver'd from their Enemies, by *Miracles*. But after they had been long ſettled in it, and had renounced the immediate Government of God, they were then left to preſerve themſelves by the ſame natural Means with other Nations.

And though I grant that ſuch Perſecutions, whenever they fall out, are very prejudicial to the Peace and Happineſs of thoſe Nations that labour under them; yet this is no ſufficient Reaſon againſt Patient-ſuffering for Religion without Reſiſtance: For ſince our Saviour is the Author of our Salvation, and hath ordained that it ſhall be propagated not by Force or Reſiſtance, but by Sufferings; and that he hath promiſed us an *eternal Weight of Glory* for our ſubmitting our Wills and Natural Affections to his Divine Commands; it is not for us to diſpute the Reaſon of it, ſince that he who pleaſed to beſtow upon us ſo great a Benefit without our Deſert, might propoſe it to us upon what Conditions he pleas'd, though never ſo hard to be performed. Yet is this to be ſo underſtand, as that this Suffering for the Teſtimony of Chriſt, may ſerve for that great End for which he ordained

dained it, (*viz.*) the Propagation of his own true Religion, by our bearing Teſtimony to it, in our couragious and patient Suffering, which in a Kingdom or Nation where Chriſtianity, or any true Profeſſion of it, is become the general and National Religion, cannot now be ſuppoſed to be neceſſary. And this may ſerve alſo for an Anſwer to your laſt Reply: For though I own, that the Municipal Laws of Commonwealths cannot abrogate any of our Natural Rights, but only in order to ſome greater Good or Benefit tending thereunto; yet certainly the Reveal'd Law of God may, and doth in ſome caſe abridge us of divers of thoſe Rights, which Men by the Law of Nature might have made uſe of.

But as for your Quotation out of *Tertullian*, tho' I have good reaſon to queſtion the very Matter of Fact, ſince I can hardly believe, that how numerous ſoever the Chriſtians might be, or whatever Miſchief they might have done privately by ſetting the *City on fire* in the Night-time, which he alſo mentions a little before, as one of the Ways by which they might have revenged themſelves: Yet do I not think, that they were then either for Strength or Number ſufficient to have made any conſiderable Reſiſtance, if they would, againſt the *Prætorian* Bands, and other ſtanding Legions, which were then, if not all, yet for the greateſt part Heathens: The moſt part of the Chriſtians of thoſe Times conſiſting chiefly of the meaner and mechanical Sort of People, altogether undiſciplin'd and unarm'd; and ſo perhaps theſe Chriſtians were under no other Obligations to Non-reſiſtance, than what the particular Providence of God had brought them to, as theſe *French* Proteſtants, who remain ſtill in *France*, are now under, that is, Obligations of Fear, and not of meer Conſcience.

And as for your Example of the *Thebæan* Legion, though it is true they might have ſold their Lives dear before they had been killed; yet would this Reſiſtance have ſerv'd them to little purpoſe againſt the reſt of the Army, which might conſiſt of 30 or 40000 Men, all Heathen, and headed by the Emperor himſelf. But what if after all this ſtir about this Story, it ſhould not be true? for *Euſebius* and *Socrates*, who lived nearer the time in which this Action is ſuppoſed to be done, make no mention at all of it, though they had very good occaſion to do it. The firſt Writer that ever made any mention of this Story, was *Eucherius* Archbiſhop of *Lyons*, who did not write this Act of the Martyrs 'till above 150 Years after the thing was done; and he is alſo followed by one *Ado* in his *Martyrology*, who lived likewiſe ſome time after him, when writing of Legends began to grow in faſhion. But granting all the Matter of Fact to be as you relate it, it proves no more than what I have already granted, that the Chriſtians were at that time obliged to lay down their Lives for the Teſtimony of Chriſt, rather than to make any Reſiſtance; but that this Precept is of a conſtant and eternal Obligation, when the Ends for which it was ordained, are no longer of any uſe, and when our Religion is eſtabliſh'd by ſuch Laws as the King himſelf cannot abrogate or diſpenſe with, I utterly deny: And certainly, if you were not very much blinded with the Prejudice of theſe Notions of *Paſſive Obedience* and *Non-reſiſtance*, you would not leave all the People of *England* at the Mercy of a Popiſh King, to be dragooned out of their Lives, Liberties and Eſtates, as the Proteſtants have been in *France* and *Savoy*, whenever the King ſhall pleaſe to put them to that ſevere Trial.

M. You have given me a very long, and I wiſh I could ſay a ſatisfactory Anſwer; and I ſee, provided it would ſerve your turn, you do not value how much you villify the Sufferings of the Primitive Chriſtians, by making them not of Ability to make any conſiderable Reſiſtance, if they would. Though *Tertullian* expreſly affirms the contrary; and ſo you likewiſe take upon you to follow the Example of a late Doctor, and to queſtion the Truth of the Story of the *Thebæan* Legion; which though it might not be committed to writing before *Eucherius* publiſh'd it, yet might he very well have received a faithful Account of this matter either by Tradition, or by ſome private Memorials that might be kept of it in that Church; ſince they ſuffered this Martyrdom not far from *Octodurum*, a Place now call'd *Martinach* in *Vallais*, a part of *Switzerland*, and not far from *Lyons*; ſo that he might very well have a ſufficient Information of ſuch a remarkable Action as this was.

Nor

Nor doth what you say savour less of a *Latitudinarian* Principle, whilst you maintain, that a patient Submission to the Supreme Powers is not of constant and eternal Obligation in all Circumstances, which is contrary to the Opinion of the Primitive Fathers, and also of the Church of *England*. But if St. *Paul*'s Doctrine be true, that we are *not to do the least Evil that Good may come*; and if our Saviour hath enjoined us, not to resist the Supreme Powers upon any account whatsoever, and also to *lay down our Lives* for the Testimony of the Truth, we ought certainly to observe his Commands, let the Consequence be what it will, though it were to the total Destruction of a whole Church, or Nation; Since God, if he pleases, may by the just Course of his Providence lay such severe Judgments upon us; who can also infinitely reward us for our patient Suffering of them in the Life to come.

F. I think I may, without any Crime, question the Truth of *Tertullian*'s Account of the Power the Christians had to make any considerable Resistance in his time; for sure he may be out in such a nice Matter of Fact, since he could be guilty of such gross Errors in point of Doctrine: For before he turned *Montanist*, he was like our *Quakers*, and thought all Resistance, of what kind soever, unlawful; and therefore he tells us, in his *Apologetick*, *Idem sumus Imperatoribus, qui & vicinis nostris*; and a little after, *Quodcunque enim non licet in Imperatorem, id nec in quenquam*; and he likewise condemned all Flight in time of Persecution, as you may see in the Treatise he writ upon that Subject.

And as for the bare Practice of Primitive Christians, they are not of any general binding Example to us, unless the Principle they go upon be true; since I doubt not but many of them suffered Death out of a pure Desire of Martyrdom, of which *Sulpitius Severus* tells us, they were more covetous, than Men were in his time of Bishopricks; insomuch that it was a common thing even for Women and Boys to offer themselves to voluntary Martyrdom, that the Council of——— was forced to make a Decree on purpose to forbid it.

And as for the Truth of the Story of the *Thebæan* Legion, it not being recorded by any Writer of the Age in which it is said to have been done, I think a Man may very well question its Reality without any Suspicion of Heresy: And when I can see those Arguments answered by you, or any Body else, which the learned Doctor you mention hath brought against it, I will give more Credit to it than now I do. But you may call me a Person of *Latitudinarian* Principles as much as you please in this matter; until you are able to prove to me by better Arguments than you have done hitherto, that the Doctrine of Non-resistance in case of Persecution for Religion, is of constant and eternal Obligation, unless it be in the same Case in which the Primitive Christians were obliged to suffer, rather than resist; and till this be done, I fear not falling under St. *Paul*'s Censure of *doing Evil that Good may come of it*: And unless God had in downright Terms commanded it, I will never believe but that I may have a very good Right, in such a Government as ours, to defend my Life against any one that would take it away upon the bare score of Religion; nor can I think it a Doctrine suitable to the Justice and Goodness of God, to ordain a whole Nation to fall as a Sacrifice to the Cruelty or Superstition of any one, or more Men.

But since you are pleased to urge me with Examples of Primitive Christians, who chose to die rather than resist or rebel against their Prince, pray give me leave likewise to tell you a few Stories, wherein these Primitive Christians have not shew'd themselves so stanch in this matter as you would make them.

In opposition therefore to your *Thebæan* Legion, I may set those Legions that composed the Army in *Gaul*, and which saluted *Julian* (afterwards the Apostate) Emperor, contrary to their Oaths of Allegiance to the Emperor *Constantius*; renouncing which, they took an Oath to the former, whilst the latter was yet alive; and had certainly fought against him, and resisted him with a witness, had he not chanced to have died by the way, before they could meet to decide the Quarrel.

M. Pray give me leave, Sir, to interrupt you a little, though I cannot deny the Matter of Fact to be as you say, and likewise that this Army was for the most part Christian; yet they were, I suppose, drawn in partly out of Hatred to *Constantius*, because he was an *Arian*, and partly out of Compassion to *Julian*, who was at that time upon very ill Terms with *Constantius* his Kinsman, the whole Army

Vi. Ammian. Mercellin. lib.

Army ſuffering many Hardſhips for his ſake, for whom they had a great Love and Eſteem. But certainly their Loyalty to *Julian* is very commendable; for though immediately after the Death of *Conſtantius*, he openly declared himſelf to be a Heathen; yet notwithſtanding that, and his Perſecution of the Chriſtians during his whole Reign, we cannot find that either the Soldiers, or any other Chriſtian, ever reſiſted or rebelled againſt him; but that they look'd upon it as unlawful to reſiſt him, may appear by ſeveral Authorities out of the Fathers of that time.

F. Since you cannot deny the Matter of Fact, you ſtrive to extenuate it by their Hatred to *Conſtantius* for his Apoſtacy from the Catholick Faith; and the ſevere and rigid Treatment of *Conſtantius*: But if their Hatred to him, becauſe he was an *Arian*, could make them join with *Julian* to rebel againſt him, pray tell me why they might not have rebelled alſo againſt *Julian*, after he had declared himſelf an Apoſtate from the Chriſtian Faith? Could they have had ſuch another Leader as *Julian* himſelf? But he reigned too ſmall a time, and was too conſtantly at the head of his Army, to give them any opportunity to ſerve him as he had ſerved his Predeceſſor.

And indeed this Army of *Julian*'s was but too obedient to him, ſince we find that though they had been Chriſtians before, yet at the time of *Julian*'s Death they were then in Profeſſion *Heathens*; for you will find in all the Eccleſiaſtical Hiſtorians, that when after the Death of *Julian*, they choſe *Jovian* Emperor, he at firſt refuſed it, ſaying, that he being a Chriſtian, would not command Heathens; whereupon they confeſſed themſelves to be all Chriſtians; but certainly this had been a very impertinent Objection, had they been publickly known ſo at that time.

And though I grant, *Julian* countenanced the doing of a great many violent things towards the Chriſtians; yet it is certain that he never made any Sanguinary Laws againſt them, but rather forbid them to be put to Death, or to ſuffer any Hardſhip on the account of their Religion; though I confeſs the Heathens, becauſe they thought it would be acceptable to him, put many Chriſtians to Death by Force and Violence: So that however he might be pleaſed with it, and connive at it, yet did he never enact it by any publick Law, or Edict; or if he had, do I allow the Chriſtians a Liberty to have taken Arms, and reſiſted him upon the account of Religion? For though I own, the Chriſtian Religion had been eſtabliſh'd by Law by *Conſtantine* the Great, yet was it not ſo throughly ſettled as to forbid the free and open Profeſſion of the Pagan Superſtition; the Heathens being admitted to all Offices and Commands, as well as the Chriſtians, and might freely perform all the Rites of their Superſtition, publick Sacrifices to their falſe Gods only excepted: So that if *Conſtantine* by his Edict could without any Rebellion, ſhut up the Heathen Temples, and give the Chriſtians the publick Liberty of profeſſing their Religion, why ſhould not *Julian* have the like Prerogative, ſince his Power was alike ſupreme and abſolute, to recall thoſe Edicts, and to make quite contrary ones, if he had ſo pleas'd?

And though I alſo own, that the Chriſtians did not actually riſe in Arms againſt *Julian*; yet that there were many of them would have done ſo, is very likely, ſince they openly pray'd for his Deſtruction, and gave him very undutiful, ſawcy, nay reproachful Language, upon the account of his Apoſtacy, whenever he came in their way. And thus ſome of thoſe who are called Fathers, were of an Opinion, that an Apoſtate, though an Emperor, might be put to Death. Pray read, what I have lately tranſcribed out of the Writings of *Lucifer Calaritanus*, (whom St. *Jerom* calls *a Man of a wonderful Conſtancy, and of a Mind prepared for Martyrdom*) who writing to the Emperor *Conſtantius*, ſays thus to him: "Pray ſhew "but one of the Worſhippers of God, that ever ſpared the Adverſaries of his "Religion: And then he reads him his own Doom out of *Deut.* 13. 1. *If there "riſe among you a Prophet, or a Dreamer of Dreams, ſaying, let us go after other Gods* "(for the Orthodox always charged the *Arians* with Idolatry) *that Prophet, or "Dreamer of Dreams, ſhall be put to Death.* You ſee what you are commanded "to ſuffer." [And again,] "Hear what God hath ordained by *Moſes*, is to be done "with you, for perſwading me to revolt from God, *Deut.* 13. 6. *If thy Brother, "the Son of thy Mother, or thy Son,* &c. *intice thee ſecretly, ſaying, Let us go, and ſerve "other Gods, thou ſhalt ſurely kill him,* &c. Here it is commanded, that my Brother "ſhall

See *Biblioth. Vet. Patr. Tom. IV. Colon.*

" ſhall be put to Death for inviting me to forſake God." [And in purſuance of this Doctrine, he tells him a little further to this purpoſe;] " That if he had " been in the hands of *Mattathias* or *Phineas*, and ſhould have gone to live after " the manner of the Heathens, without doubt they would have kill'd him with the " Sword, which he repeats twice for fear he ſhould forget it.

And this Treatiſe being ſent for by the Great *Athanaſius*, and being by him peruſed, he was ſo far from condemning any thing in it, that, as you may ſee in his Letter to this *Lucifer*, (which is in the ſame Volume from whence I tranſcribed this) he highly praiſeth him for writing it, and calls his Book, *the Doctrine of the true Faith*, beſides many other Commendations, too long here to be repeated. And as for *Julian* himſelf, *Sozomen* the Eccleſiaſtical Hiſtorian, writing of the manner of his Death, ſays, that it was believed by many that he was killed by ſome Chriſtian Soldier of his Army, whom he applauds for ſo doing.

M. I cannot deny but the Carriage of ſome Chriſtians of thoſe Times, even of thoſe who are called *antient Writers* or *Fathers*, might be too undutiful, and may be attributed to the moroſe, monaſtick Temper of the Father you have quoted, though a great deal of this ſort of Carriage may be attributed to that Chriſtian Zeal which the *Jews* called the *Spirits of Fortitude*, and the *Greeks* call παῤῥησία, which we render *Boldneſs* or *Confidence*, and which did often tranſport them to ſay thoſe indecent things to perſecuting Kings, or their Governors, which had been inſufferable in any Man elſe on another occaſion; and this was not only in Words, but Actions too. Thus when the Emperors *Numerianus*, or *Decius*, (for my Author doth not know which it was) would have entred into the Cathedral Church of *Antioch* in time of Divine Service, *Babylas* the Biſhop, ſtanding in the Church-porch, ſhut the Door againſt him, telling him, that he would not ſuffer him, who was a Wolf, to enter into the *Sheepfold of Chriſt*. And we alſo read, that *Valentinian* (who was afterwards Emperor) being then an Officer under *Julian*, and waiting upon him to the Door of a Heathen Temple, gave the Prieſt a Box on the Ear, becauſe he offer'd to ſprinkle him, being a Chriſtian, with his prophane Holy Water: Yet I confeſs, *Theodoret* commends the Action; and ſays, *they* after *choſe that* Valentinian *Emperor*, *him who had before ſtruck the Prieſt*: And therefore, I wonder to what purpoſe you quote ſuch Paſſages out of antient Writers, and the Actions of Primitive Chriſtians, which, if you are a Man of that Loyalty or good Breeding, as I hope you are, you will not yourſelf approve of.

F. I do not tell you I quote them for our Imitation; but only to let you ſee, that the Actions of thoſe you call Primitive Chriſtians and Fathers, are not by your own Confeſſion to be the only Pattern for us to follow; ſo that indeed their Practices can ſignify nothing to us, unleſs the Principles they acted by were ſuitable to the Laws of God and right Reaſon; unleſs you will have no Precedents to be good, but what ſhall ſuit with your Humour, and thoſe Principles you have already imbibed: And if *Babylas* the Martyr might, without any Sin, ſhut the Emperor out of the Church by force, and that *Valentinian* was commended for ſtriking the Emperor's Prieſt on the Face, I think here are by your own Confeſſion two ſufficient Primitive Examples of Reſiſtance, both of the Emperor's Perſon, as alſo of thoſe commiſſion'd by him, as certainly this Prieſt was, or elſe he could have had no Right to have exerciſed his Idolatrous Worſhip, after the Temples had been ſhut up under *Conſtantine* and *Conſtantius*.

But I now deſire your Patience to let you ſee, that not long after theſe Times, the Chriſtians, as well Soldiers as others, were not ſo through paced in theſe Doctrines of Paſſive Obedience and Non-reſiſtance, as you would make them; for it was by the Power of the Chriſtian Legions in *Britain*, that *Maximus* took the Boldneſs to rebel againſt the Emperor *Gratian*, and making himſelf Emperor, marched into *Gaul* againſt him; where the poor Prince being alſo deſerted by his Chriſtian Army, and forced to fly away with a few Followers, was not long after murder'd by *Andragathius*; after which, this *Maximus* had ſo good Succeſs, that he poſſeſs'd himſelf not only of *Britain*, but *Spain*, *Gaul*, and part of *Germany*; and was alſo acknowledged for Emperor by all the Subjects in thoſe Provinces, as well Clergy as Laity, though the Emperor *Valentinian*, the Son of *Gratian*, was then alive. And all the Biſhops making their Applications to him, deſir'd him to call a Council in *Gaul*, to ſuppreſs the Hereſy of *Priſcillian*, which he did in compliance with their Requeſts; wherein they condemn'd that Heretick, and his Fol-

lowers, of Hereſy; who afterwards (at the inſtance of *Ithacius*, and ſome other Biſhops) were by this uſurping Emperor condemn'd, with divers others, to ſuffer Death; being the firſt that ever ſuffer'd that Puniſhment for Hereſy. This *Maximus*, after five Years Reign, was overcome, and kill'd in Battel by the Emperor *Theodoſius*, who reſtored that part of the Empire to *Valentinian* II.

And farther, to let you ſee that the common People of theſe Primitive Times, though they were not able to make Emperors ſo well as the Army, yet they were not ſo ſtrait-lac'd as not to reſiſt the Emperor's Orders, whenever they thought they entrenched upon their Religion, or that they went about to perſecute them for it: I can give you a great many Examples out of Eccleſiaſtical Hiſtory, of which I will only here ſet down ſome few: The firſt is out of *Socrates*, *Eccl. Hiſt.* when the Emperor *Conſtantius*, at the Inſtigation of *Macedonius* the *Arian* Biſhop, had perſwaded him to ſend ſome Bands of Soldiers into *Paphlagonia*, to terrify the People, and make them turn *Arians*. The Inhabitants of *Mantinium*, enflamed with a Zeal for the Orthodox Religion, marched againſt the Soldiers, with a good Courage; and having provided themſelves with the beſt Arms they could, they gave them Battel; in which few or none of the Emperor's Soldiers eſcaped. And though I confeſs, (the Hiſtorians ſay) theſe People were moſt of them *Novatians*; yet this Action ought not to be condemned only for that Cauſe, ſince they were rather look'd upon as Schiſmaticks than Hereticks, and were in all things elſe, except that one point, about reconciling the Lapſed, very Orthodox; but in all other things were more ſtrict and ſcrupulous, than the Catholicks themſelves.

Lib. 2. ch. 30.

So likewiſe, when the Orthodox at *Conſtantinople* had choſen *Paul* for their Biſhop, but the Emperor reſolving to make *Macedonius* Biſhop in ſpite of their teeth, and had ſent *Philip*, the Preſident, to fix *Macedonius* in that See; as he was about to give him Poſſeſſion of the Church, though they were guarded all along with Soldiers, yet when they came near the Door, the People made that Reſiſtance, that they could not get in till ſeveral thouſands of them were kill'd.

Ibid. cap. 10.

And ſome Years after, when the Emperor *Theodoſius* II. had baniſh'd St. *Chryſoſtom*, *A. D.* 404. the People flock'd together about the Palace, ſo that the Emperor, to pacify them, was forced to recall him from his Baniſhment.

And when St. *Ambroſe* was baniſh'd by *Valentinian*, at the Inſtigation of his Mother *Juſtina*, the People did reſiſt all ſuch as came to carry him away: And ſuch was their Zeal for the Truth, and Love to their injur'd Biſhop, that they choſe rather to loſe their Lives, than ſuffer their Paſtor to be taken away by the Soldiers, that were ſent to drag him out of the Church. I could give you more Inſtances of this kind, from theſe Primitive Times; but theſe may be ſufficient to ſhew you, of how little account the Doctrine of Non-reſiſtance was in thoſe Times, after Chriſtianity was once ſettled, and that the People ſuppoſed they had the Law on their ſide. Neither do I produce them as fit to be imitated in all like Caſes, but only to let you ſee, that the Example of thoſe Times you call Primitive, are no ſufficient Argument of what was lawful, or unlawful to be done.

Hiſt. Tripartit. L. 10. cap. 13.
Hiſt. Rufini, L. 11. c. 15.

M. Since you yourſelf do allow all, or however, moſt of theſe Actions, to be unlawful, I think you might very well have ſpared the mentioning of them; ſince I grant, that about the end of the 4th Century, when theſe things happen'd, not only the common People, but alſo the Clergy began to grow very corrupt in their Manners: And therefore, I cannot much value any Precedents that you can bring in that time, to juſtify Reſiſtance in Chriſtians, unleſs you could have ſhewn me any before the time of *Conſtantine*, which I am ſure you are not able to do, much leſs any Authority from any of the Primitive Fathers, which juſtifieth Reſiſtance of the Supreme Powers upon any account whatſoever.

F. 'Tis a very hard matter to ſatisfy you by Quotations; for before the time of *Conſtantine*, it is evident the Chriſtians were not only weak, diſperſed and diſarmed, but had alſo the Laws of the Empire againſt them. And I have already granted, That Self-defence againſt Perſecution upon account of Religion, was unlawful; but when, in the time of *Conſtantine*'s Son and Succeſſor, the People having the Law on their ſide, ſtood upon their defence againſt thoſe that would have taken away their Lives, as in the Examples I have brought of the Inhabitants of *Paphlagonia*, then the Inſtances come too late; and the Age is grown ſo corrupt, that they are no longer Primitive Chriſtians, than they obſerve your

Doctrines.

Doctrines. But as for expreſs Precepts, or Teſtimonies out of the Scriptures and Fathers, to juſtify Reſiſtance, I think it is very needleſs to bring any; for the great Mr. *Hooker* ſhews us very well, that it is the Intent of the Scripture to deliver us all the *Credenda* and *Agenda*, neceſſary to Salvation; but in other Matters, within the Compaſs of our Reaſon, it is enough if we have evident Reaſon for them, *Scripturâ non contradicente*; and if the Scripture doth not forbid ſuch Reſiſtance for Self-defence, (as I hope I have now proved to be lawful) I do not value whether there be any expreſs Authority to be quoted out of the Fathers for it or not: For whatever the Scripture leaves free, I think the Fathers have no power to forbid.

M. I ſee it is to no purpoſe to argue longer with you from Primitive Examples or Teſtimonies: And therefore I come now to the laſt thing I propoſed; *H. P. O. c. 2.* which is to ſhew you, that the Doctrine of our Church of *England*, as it is contain'd in the 39 Articles, Canons, and Book of *Homilies*, is as expreſly for Paſſive Obedience, and againſt all Reſiſtance of the Supreme Powers, as the Primitive Church itſelf: And therefore I ſhall begin with the Infancy of the Reformation, under *Henry* VIII. for there I begin the Reformation of Religion in this Kingdom.

F. I pray, Sir, give me leave to interrupt you; for I muſt tell you, I will not be concluded by any thing that the King or Church, in thoſe Times did publiſh concerning Matters of Faith or Practice; ſince, unleſs it were in that one Political, rather than Religious Article, concerning the Pope's Supremacy, the Church in all other Speculative and Practical Doctrines, was as much infected with Popery as it was before: And therefore, if you will have me to be converted by your Authorities, I pray begin with the purer Times of *Edward* VI. and Queen *Elizabeth*.

M. I ſhall comply with your Deſires, ſince you will have it ſo: And therefore I ſhall begin with the 39 Articles of the Church of *England*; where, in the 37th *H. P. O. c. 1.* Article, (as they were paſs'd under Queen *Elizabeth*, *Anno* 1562.) you may find it runs thus: "*The Queen's Majeſty hath the Chief Power in this Realm of* England, *and* "*other her Dominions, unto whom the Chief Government of all the Eſtates of this Realm,* "*whether they be Eccleſiaſtical or Civil, in all Cauſes doth appertain, and is not, nor ought* "*to be ſubject to any foreign Juriſdiction.*

It is true, this Doctrine is not limited to the particular Caſe of Subjects taking up Arms; but it ſeems to me by two neceſſary Conſequences, to be deduced from it: Firſt, Becauſe if the Pope, who pretended by a Divine Right, had no Power over Kings, much leſs have the People any ſuch Power, who pretend to an Inferior Right, as that of Compact. Secondly, Becauſe the Article makes no Diſtinction, but excludes all other Power, as well as that of the Pope. And in truth, the Plea is the ſame on either ſide; the Pope ſays, as long as the Prince governs according to the Laws of God, and the Church, (of which he is the Interpreter) ſo long the Cenſures of the Church do not reach him; And ſay the People, as long as the Prince governs according to the Laws of the Land, (and of the Meaning of thoſe Laws they themſelves will be the Interpreters) ſo long are they bound to be obedient; but as ſoon as the King doth any thing that may contradict the Pope, then he is (deſervedly, ſay the *Romaniſts*) excommunicated, depoſed, and murdered; and when he uſurps upon the Peoples Liberties, then he ought to be depoſed by the People. The Arguments on either ſide are the ſame, and for the moſt part the Authorities.

F. I muſt confeſs, this is the firſt time that ever I knew any Man go about to prove *Paſſive Obedience* and *Non-reſiſtance* out of the *Thirty Nine Articles*; and indeed I ſhould have thought you might have deduced any thing elſe from theſe Articles, as well as that. But let us ſee, how what I have ſaid in this Diſcourſe can come within the Contents of this Article, which only ſays, that the King or Queen of *England* is Supreme Governor over all Perſons, as alſo in all Cauſes, whether Eccleſiaſtical or Civil, and is not ſubject to any foreign Juriſdiction: From whence you raiſe this Argument, That if the Pope, who claims by a Divine Right, hath no Power over our Kings, much leſs have the People, who can pretend to no ſuch Right as he does, but only that by Compact. Now pray tell me, whether this be concluſive. I aſſert, that the People have, by the Law of God and Nature, a Right to defend themſelves againſt the Supreme Powers, in

case they are violently assaulted in their Lives, Liberties, or Estates. Now I would very vain have you prove to me, how *Resistance* for Self-defence doth subject a Prince to any Jurisdiction, either foreign or domestick; and whether the People can have no Right to resist such Violence, unless they have also an authoritative Power over them?

H. P. O. p. 3, 4

M. It is not worth while to dispute this any longer with you to so little purpose; and therefore I shall come to the Canons of the Church, and in particular, those of the Year 1640, which I look upon as a full Explanation of the Belief of our Church in this Point, where you may see, in the first Canon, these two plain Propositions, among others.

Bp. Sparrow's *Collection of Canons*, &c. p. 347.

First, "That the most Sacred Order of Kings is of Divine Right, being the "Ordinance of God himself, founded in the prime Laws of Nature, and clearly "established by express Texts both of the Old and New Testaments.

Secondly, "For Subjects to bear Arms against their Kings, offensive or defen- "sive, upon any pretence whatsoever, is at least to resist the Powers which are "ordained of God: And tho' they do not invade, but only resist, St. *Paul* tells "them plainly, *they shall receive to themselves Damnation.*

From which you may plainly see, that this *Convocation*, which consisted of as great Men as, I think, had been for divers Ages, do clearly maintain Monarchy to be of Divine Right, and Resistance to be in no Case lawful.

F. I should grant the Canons of this Convocation to be a good Proof of the Judgment of the Church of *England*, were it not for two very good Reasons I have against them: The one I will tell you presently, and the other I will keep a while to my self. In the first place therefore, I suppose you cannot but very well know, that this Convocation sate and passed these Canons, which likewise receiv'd the King's Confirmation, after the Parliament (that was summoned together with this Convocation) was dissolved: And the Writs by which they sate being to the same purpose, I suppose you know, that by the Law of *England* the Convocation having been look'd upon as an Appendix to the Parliament, was till then always dissolved with it. For which reason all Acts and Proceedings of this Convocation were condemned, and declared null and void by the Long Parliament, that began to sit the latter End of the same Year: And which is more, was likewise condemned by the first Parliament after the Restoration of King *Charles* the second. And therefore, I think, I have very little Reason to own these Canons as conclusive.

Vid. Rush. *Collect.* part 2. vol. 2. f. 1365.

H. P. O. ch. 2.

M. In the first place, I might reply to what you have now said, that that very Parliament, which first condemned these Canons, afterwards ruined the Monarchy itself. In the next place, that in old time the General or Provincial Synods were not dependant upon the Assembly of the Estates at the same time. And I likewise farther answer, that these Canons were made and confirmed in a full Convocation of both Provinces of *Canterbury* and *York*; and the making of Canons being a Work properly Ecclesiastical, these Canons were made by the Representatives of the whole Clergy of this Kingdom. 2. The Canons were confirmed by the King (which was all that was of old required in such Cases) and tho' the Convocation sate after the Dissolution of the Parliament, yet this is not without precedent, even in the happy Days of Queen *Elizabeth*, not to look back unto *Henry* VIII. or the Primitive Times. And as for your Objection, that these Canons were rebrobated since the Restitution of *Charles* II. I say, that I quote them not as Law, but as the known Sense of the Church of *England* at that time.

F. Your first Answer in behalf of these Canons is altogether invidious: For it was not this Parliament that ruined the Monarchy, but only the Rump or Fag-end of it, after it had suffered divers Violences and Exclusions of Members by the Army, and that the House of Lords (being by this *Junto* voted useless and dangerous) were shut out of doors. Nor is your second Answer any more true; for antiently, in the *Saxons* Time, the *Wittena Gemot* or Great Council, and the General Synod, made one and the same Assembly, consisting both of Clergy-men and Laymen; and then all Matters of Ecclesiastical Discipline were enacted and confirmed by the King, as also the Spiritual as well as Temporal States. Nor can you shew me an Example of any General or Provincial Synod, which met independently, and without the States of the Realm, until after the Reign of *Henry* I. when the Popes took upon them to encroach upon the Royal Authority, as also upon our Civil Rights, and by his Legates to call Synods, and make Ecclesiasti-

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cal Constitutions, in which neither the King nor the States of the Kingdom had any thing to do. And tho', I grant, that upon the *Reformation* the King was restor'd to those Rights, as Supreme Governor of the Church, which the Pope had before usurped; yet is not this Act of the *Supremacy* to be so understood, as to give the King all that Power, which the Pope unjustly took upon him to execute before; for that had been to make the Case little better than it was before: And therefore this Act of the *Supremacy* being only an Act of Restoration of the King to his pristine Rights, (of which that of calling Synods and Convocations was one of the principal) the King could not call nor continue those Assemblies in any other Form, or after any other manner, than they were held before the Pope's Usurpation, in taking upon him to call such independant Synods: And notwithstanding what you tell me, I am confident you cannot shew me any Precedent of a Convocation so turned into a Synod, as this was, in all the Reigns of *Henry* VIII. and Queen *Elizabeth*.

But as for your last Reply, that you quote not these *Canons* for a Law that obliges by a Civil Sanction, but as the Sense of the Church of *England* at that time; if they do not now oblige the Church neither in point of Belief nor Practice, as you seem to grant, it signifieth no more to me what was the Sense of the greatest part of the Members of that Convocation in this matter, nor doth it any more shew me what is the true Doctrine of the Church of *England*, than if I should tell you, that because in the Reign of Queen *Elizabeth* the major part of the Bishops and Clergy of our Church were rigid *Calvinists* in the Interpretation of that Article about *Predestination*, that therefore *Calvinism* was then the Doctrine of the Church of *England*, but is not so now. And therefore we ought not to take that for a Doctrine of any National Church, unless the Synod or Assembly, that declares such Doctrine, be solemnly and lawfully assembled, according to the Laws and Customs of that Nation or Country wherein they are so declared.

M. Since you so much contest the Authority of these *Canons*, I shall no longer insist upon them, but I shall here shew you out of the Books of *Homilies*, to which all the Clergy in *England* are bound to subscribe by Act of Parliament (as well as to the Articles and Canons) as containing wholesome Doctrine, and nothing contrary to the Word of God (so that these Homilies do indeed thereby become a part of the known Laws of the Land) that in these very Homilies there are divers Passages so very full and plain against *all Resistance of the Sovereign Powers for any Cause whatsoever*, that if you are a true Church of *England* Man, as I hope you are, you can have no just Reason to deny their Authority. *H. P. O.* p. 8, 9.

The *Homily*, or *Exhortation* to *Obedience*, was made *An.* 1547. in the Reign of King *Edward* the sixth; in the second Part of which Sermon of Obedience we are told in these Words (which I desire you to read along with me):

"That it is the Calling of God's People to be patient, and on the suffering "Side, and to render Obedience to Governors, altho' they be Wicked and "Wrong-doers, and in no case to resist and stand against them. Subjects are "bound to obey them (*i. e. Governors*) as God's Ministers, altho' they be evil, "not only for fear, but also for Conscience sake. And here, Good People, let us "mark diligently, that it is not lawful for Inferiors and Subjects in any Case to "resist and stand against the Superior Powers; for St. *Paul*'s Words are plain, that "*whoso withstandeth shall get to themselves Damnation.* Our Saviour Christ, and his "Apostles, received many and divers Injuries of the unfaithful and wicked Men "in Authority; yet we never read that they, or any of them, caused any Sedi"tion, or Rebellion against Authority. We read often, that they patiently suf"fered all Troubles, Vexations, Slanders, Pangs, Pains, and Death itself, obe"diently, without Tumult or Resistance. Christ taught us plainly, that even "the wicked Rulers have their Power and Authority from God; and therefore it "is not lawful for their Subjects to withstand them, altho' they abuse their Power. "Let us believe undoubtedly (good Christian People) that we may not obey "Kings, if they command us any thing contrary to God's Commandments: In "such a case we ought to say as the Apostle, *We must rather obey God than Man.* "But nevertheless, in that case we must not in any wise withstand violently, or "rebel against Rulers, or make any Insurrection, Sedition, or Tumults, either "by force of Arms or otherwise, against the *Anointed of the Lord*, or any of his "appointed Officers; but we must in such a case patiently suffer all Wrongs and

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" Injuries, referring the Judgment of our Cauſe only to God." And ſee Part the Third of the ſame Homily: " Ye have heard before of this Sermon of good Or-" der and Obedience, manifeſtly proved both by Scriptures and Examples, That " all Subjects are bound to obey their Magiſtrates, and for no cauſe to reſiſt, or " withſtand, or rebel, or make any Sedition againſt them, yea altho' they be " wicked Men."

I could find many more ſuch Places in our Homilies, but I ſhall trouble you but with one other Paſſage out of the ſecond Book of Homilies, compiled in the Reign of Queen *Elizabeth*, in which Book the Homily againſt *Wilful Rebellion* is full to this purpoſe.

" In reading the Holy Scriptures we ſhall find in very many, and almoſt infi-" nite Places, as well of the Old Teſtament as of the New, that Kings and Prin-" ces, as well the Evil as the Good, do reign by God's Ordinance, and that " Subjects are bound to obey them. The farther and farther any Earthly Prince " doth ſwerve from the Example of the Heavenly Government, the greater Plague " he is of God's Wrath and Puniſhment, by God's Juſtice, unto the Country and " People over whom God for their Sins hath placed ſuch a Prince and Gover-" nour. What ſhall Subjects do then? What a perillous thing were it to com-" mit to Subjects the Judgment, which Prince is wiſe and godly, and his Go-" vernment good, and which otherwiſe? As tho' the Foot muſt judge of the " Head; an Enterprize very heinous, and which muſt needs breed Rebellion; " and is not Rebellion the greateſt of all Miſchiefs? A Rebel is worſe than the " worſt Prince, and Rebellion worſe than the worſt Government of the worſt " Prince, that hitherto hath been. If we will have an evil Prince (when God " ſhall ſend one) taken away, and a good one in his place, let us take away our " Wickedneſs, which provoketh God to place ſuch a one over us. Shall the " Subjects both by their Wickedneſs provoke God for their deſerved Puniſhment " to give them an undiſcreet and evil Prince, and alſo rebel againſt him, and " withal againſt God, who for the Puniſhment of their Sins did give them ſuch a " Prince?" And this Doctrine is more ſtrictly enforced in the ſecond Part of that Homily, from the Example of King *David*, in his Carriage towards *Saul*; from which it will appear, that they did not ſuppoſe *David* to have uſed ſo much as defenſive Arms againſt him, as you may ſee by this Paſſage in it: " That " when for his moſt painful, true and faithful Service, King *Saul* yet rewarded " him not only with great Unkindneſs, but alſo ſought his Deſtruction and Death " by all means poſſible, *David* was fain to ſave his Life, not by Rebellion or any " Reſiſtance, but by Flight, and hiding himſelf from the King's ſight."

From all which Paſſages out of the *Homilies*, I think, we may draw theſe plain Concluſions: 1. That as well evil as good Governors are to be obeyed as God's Ordinance. 2. That therefore they are not to be reſiſted for any cauſe, tho' they abuſe their Power never ſo tyrannically. 3. That the People are not to judge when the Prince thus abuſes this Power, ſo as thereby to make any diſturbance. 4. That not only offenſive, but alſo defenſive Arms, if made uſe of againſt him, are utterly unlawful, and alſo againſt God's expreſs Command.

F. I grant, theſe *Homilies* ſeem to be very ſtrictly penned againſt all *Reſiſtance*, and ought to be (like all Diſcourſes of this nature) poſitive and general; and perhaps if I were to preach a Sermon to the Common People on this Subject, it ſhould be much to the ſame purpoſe; and yet for all that I might not believe, that it was abſolutely unlawful for a whole Nation to defend themſelves, in caſe of ſuch extream Violence or Oppreſſion as I have already ſuppoſed: For when Preachers ſpeak to Vulgar Auditors, they are not bound, like Caſuiſts, to tell them all the reſerved Caſes in which they may be diſpenſed with in their Duty, leſt they might uſe this Chriſtian Liberty for *a Cloak of Maliciouſneſs* (as the Apoſtle tells us.) Thus if a good Preacher makes a Sermon againſt *Stealing* or *Murder*, he may very juſtly tell the People (as the Authors of theſe Homilies do) that they ought not in any wiſe, or for any Cauſe, to commit *Theft* or *Murder*; without telling them all thoſe Caſes of meer Neceſſity, in which it may be lawful to make uſe of the Goods of another, and alſo to commit *Homicide*; as, when a Man is forced to take Victuals, tho' without the Owner's Conſent, for meer Preſervation of Life, or to kill a Thief, or any other Man that aſſaults him, to ſave his own Life. So tho' the Authors of theſe Books of *Homilies* do ſay, that that we may

not

not in any wise, and for no cause, withstand violently, or resist, the Supreme Powers; but that we must suffer patiently all Wrongs and Injuries, referring the Judgment only to God: Yet since they have not particularly put the Case, as I have now done, *viz.* what is to be done in case a whole Nation or People are about to be destroyed, ruined or enslaved, and made Heathens or Papists, by the unjust, nay illegal Violence of the Supreme Powers; we may rationally suppose, that since they were good Men, and never intended to urge these things further than what the Scripture and Fathers have already done, that they never really intended, that a whole People or Nation, together with the Religion established, should be thus ruined and destroyed, rather than such *Resistance* should be made.

M. But pray tell me, can there be any thing more express against your Interpretation, or more plainly oblige us to a patient Suffering, without Resistance of of the cruellest and most intollerable Tyranny, than these words I last read. *The farther and farther any earthly Prince doth swerve from the Example of the heavenly Government, the greater Plague he is of God's Wrath and Punishment, by God's Justice, unto the Country and People, over whom God, for their Sins, hath placed such a Prince and Governor.* And by what there follows, you will see that tho' such a Prince be so great a Plague to them; yet they cannot without Sin judge such a Prince, or rebel against him, but must patiently wait God's leisure to remove him.

P. I confess this is the strictest Passage of any in the whole Book, yet doth not this expressly reach the Case here put; or if it had, do I think myself, or any Body else, obliged, because of one or two unwary Passages in this Homliy, of which perhaps neither the Parliament nor Convocation closely considered the evil Consequence, or so much as knew they were there; things of this kind usually passing such great Assemblies by the Lump, as relying upon the Testimony of some leading Bishops or Clergy-men, without considering the Book of Homilies strictly, or reading over the whole. So that the Parliament might very well declare, that they contained sound Doctrine, and nothing contrary to the Word of God, without asserting the literal Truth of every particular Passage in them, much less, that all that is contained therein, is to be believed upon pain of Damnation; and therefore I must beg your pardon, if I cannot suppose that all Resistance whatsoever, though in the most necessary Cases of Self-defence which I have now put, is absolutely unlawful and rebellious; or that the Fathers of our Church ever intended to lay so hard a Yoak upon the Neck of this Nation, which neither they nor their Fathers were ever able to bear; much less, that there is thereby taken away from this Nation, defending those fundamental Rights and Priviledges, which are essential to the Nature of the Government, and which, as it distinguisheth it from a Despotick Monarchy, so it doth the Subjects likewise from those of other Nations: For if the Scriptures themselves were never intended to alter Civil Constitutions much less certainly can either our Canons or Homilies do it. And therefore to deal freely with you, if the Canons and Homilies had been never so express on your side; yet, as long as no such Consequence can be drawn from the Holy Scriptures, I should not much value what they say, unless you can prove the Church of *England* to be infallible. And for this I have the sixteenth and twentieth Article of the Church of *England* (made in the Year 1562.) to bear me out. The former of which, concerning the Sufficiency of the Holy Scriptures for Salvation, runs thus: *The Holy Scripture contains all things necessary to Salvation: So that whatsoever is not read therein, nor may be proved thereby, is not to be required of any Man, that it should be believed as an Article of Faith, or be thought necessary or requisite to Salvation.* Therefore if I have plainly proved, by sufficient Authority, that your Doctrines of Passive Obedience and Non-resistance are not expressly found in Scripture, nor by necessary consequence may be rationally deduced from thence, they cannot be required of any Man to be believed or practised as necessary to Salvation. And therefore, if either this Church, or any other, imposes such a burden upon me, I am not obliged to bear it: And this the latters of these Articles of the *Authority of the Church* expressly asserts in these Words: *It is not lawful for the Church to ordain any thing contrary to God's Word written,* &c. After which it follows thus: *So that besides the same, it ought not to enforce any thing to be believed for necessity of Salvation.* Where note, that by *besides the same,* is to be understood any thing that is not found there-may be proved thereby by necessary Consequence, as was said before; and if the whole Church itself cannot do this, certainly no particular Church can.

And

And that divers of the moſt eminent Divines of our Church have uſed the ſame freedom with ſeveral other Doctrines contained in theſe Homilies, may appear from Dr. *Hammond's*, Dr. *Heylin's*, and Dr. *Taylor's*, with ſeveral other eminent Writers expreſly denying, that the Church of *Rome* is guilty of Idolatry, or that the Pope is Antichriſt; tho' both theſe Doctrines are as plainly laid down in the Homilies, as the Doctrine of Non-reſiſtance: And yet none of theſe Men are ever taxed by thoſe of the Church of *England*, for quitting her antient Orthodox Doctrines. And I deſire you to give me a good Reaſon (if you can) why it is more lawful and excuſable to part with the former of theſe Doctrines than the latter?

Vid. *2d. Vol. of Homilies, 1ſt, 2d and 3d Part of the Sermons againſt Idolatry, eſpecially the laſt, p. 156, 162, 163.*

The like I may ſay alſo for the Doctrine of Predeſtination; which tho' expreſly aſſerted in the 36 Articles of the Church of *England*, as interpreted by all the Biſhops and Writers in the Reign of Queen *Elizabeth* and King *James*; as alſo the Biſhops and Divines ſent as Delegates from our Church to the Synod of *Dort*, who joined in the Interpretation of that Article, in the ſtrict *Calviniſtical* ſenſe, you find, in all the Determinations of that Synod againſt the Doctrines of the *Arminians*, which then began to prevail; yet ſince the time that Archbiſhop *Laud* had the nominating of what Perſons he thought fit to be made Biſhops, Deans, *&c.* not one in ten of them but have been *Arminians* in all thoſe Points, wherein they wholly differ from the Doctrine of *Calvin*, which is but the ſame with that of our 36 Articles ſo interpreted; yet none of the Divines of our preſent Church, who hold theſe Opinions, are branded with Apoſtacy from its antient Doctrine; but if any well meaning Divine, out of love to his Country, and to prevent Popery and Slavery from breaking in upon us, have but preach'd or publiſh'd any thing in derogation to theſe darling Doctrines of Paſſive Obedience and Non-reſiſtance, he is ſtrait branded with Apoſtacy from the Church, in quitting its main diſtinguiſhing Character; and we have lately ſeen degrading, nay the moſt cruel Whipping and Impriſonment, thought too little for ſuch a Man. But one may ſay of ſome Men with truth enough,

Dat veniam Corvis, vexat cenſura Columbis.

M. Methinks, Sir, it is a great Preſumption in you, and thoſe of your Party, to make yourſelves the ſole Interpreters of thoſe Places of Scripture which ſo expreſly forbid all Reſiſtance of the Supreme Powers; and then, when you have wreſted the Scriptures to your own Mind, to cry out, that you are not bound to believe theſe Chriſtian Doctrines, becauſe you ſuppoſe they are contrary to Men's humane Reaſon, and the too great Love they have to their own Concerns; which is but the ſame way of reaſoning which the *Socinians* and *Arians* make uſe of againſt our Saviour's God-head, becauſe their narrow Underſtanding cannot comprehend it: But beſides all this, I could ſhew you out of the beſt Writers of the Reformed Religion, both in this and other Proteſtant Churches, who interpret theſe places of Scripture againſt all Reſiſtance, in the ſame ſenſe as our honeſt Homilies have done; but I find it grows late, and I have not time now to ſhew you them: or if I had, do I believe you would be much edified by them, ſince you make ſo ſlight of the Authority of our Homilies.

F. You are very much in the right of it, and indeed I do not deſire you ſhould put yourſelf that trouble, for the Papiſts themſelves will not own any thing for a Doctrine of their Church, which is not expreſly found in the Council of *Trent*, or the Catechiſm compoſed according to its Decrees, and therefore will not be concluded by the Sermons or Theological Treatiſes of any of the Divines of their own Church, as to any Thing or Matter in debate between us. And, I think, I that am a Proteſtant, may certainly claim a like Chriſtian Liberty; eſpecially, ſince I am very ſenſible upon what Account too many Men have carried theſe Doctrines of Paſſive Obedience and Non-reſiſtance to ſo great a height as they have done of late Years: But ſince you tell me that ſo many learned Writers, both of this and other Proteſtant Churches, have been of your Mind; So I could alſo (if I had a mind to cap Quotations with you) produce a ſufficient number of Places out of *Luther*, *Calvin*, *Zuinglius*, and other firſt Reformers, as alſo of our own Writers at home, who have in many places of their Works allowed Reſiſtance for Self-defence, in caſe of intolerable Violence and Oppreſſion, to be lawful; and of theſe I can give you a large Catalogue, whenever you pleaſe to command me.

But

But since they will convince you, as little as I suppose your Writers would do me, I shall forbear mentioning them any further.

M. I value not much what *Luther*, *Calvin*, or any other violent Men of that sort, may out of Passion or Inadvertency have written on this Matter; and yet I can shew you a Passage out of *Calvin's Institutions*, which expresly forbids Subjects or private Persons to take up Arms against the Supreme Powers, as you may see by his own Words in the fourth Book, *cap.* 20. *Neque enim si ultio Domini est effrenatæ Dominationis correctio, ideo protinus demandatam nobis arbitremur; quibus nullum aliud quam parendi & patiendi datum est mandatum. De privatis Hominibus semper loquor.* And tho' I grant some Divines of our Church have allowed Resistance in some Cases, where the People, by the Laws and Constitutions of their Country might lawfully have made such a defence of their Liberties, yet have they denied it in all other Cases, and particularly in our own Government; which is sufficient to shew, that whatever your Thoughts may be of it, yet that they thought it absolutely unlawful for the Subjects of this Realm to take up Arms against the King, or who acted by his Authority, upon any Account whatsoever; and therefore I must needs tell you, that I look upon these Doctrines of Passive Obedience and Non-resistance, as the distinguishing Characters of the Church of *England* from all other Churches.

F. Tho' I do not much value the Opinion of Divines in matter of Politicks, since most of them that I have met with have been very unhappy, when they have undertaken to meddle with that Trade; yet I doubt not but I can shew you, that some learned Men of our Church have not thought all Resistance to be unlawful, in case the main and fundamental Constitutions of our Government shall happen to be assaulted, or ourselves, in respect of our Liberties and Estates, like to be reduced to absolute Vassalage and Slavery. And therefore, if your Divines will own Resistance, where, by the Constitutions of the Government, it is allowed to be lawful, I think I can also prove, that it is not only lawful, but necessary, in some Cases in our own, for the Preservation of the Original Constitution; and if this should prove so, I know not what your distinguishing Character of the Church of *England* will signify, unless you will make it necessary for particular Churches to have other distinguishing Characters than the Scripture requires, or the Constitution of the Government will allow of; and if so, I doubt the Church of *England* would get as little Credit by such distinguishing Characters, as the *Calvinist* Churches abroad do by making absolute Predestination one of the Terms of their Communions, the Scriptures (without their rigid Interpretation) teaching no such Doctrine. But as for your Quotation out of *Calvin*, it amounts to no more than what I have all along granted, *That single private Subjects ought never to take up Arms or resist those in Power*, but when the good of the whole Commonwealth requires it. And therefore he, in the same Book, places a Power of Resistance in subordinate popular Magistrates, whereby you may see he grants the Thing lawful, but will not leave the Power of judging only in the common People, or Mobile; and so far I confess he is in the right, tho' I grant those Magistrates are, in respect of the Monarch, as much subject as the People.

M. I shall be glad to know what Divines of our Church they are, who have granted Resistance of the Subjects of this Kingdom to be in any Case lawful; for if there are any such, I confess they are Authors unknown to me; nor do I know any, but one, who was seemingly in the Communion of the Church of *England*, who hath asserted this Doctrine in his Book of *Julian* the Apostate; but you see he was presently confuted by those learned Men of our own Church, who undertook him, and, I think, have so well performed it, that I cannot tell whether it hath been more for their Glory or his Disgrace.

But as for what you say against making Passive Obedience the distinguishing Character of our Church, I confess indeed, it is very bad for a Church to hold evil or indifferent distinguishing Doctrines; but it is as certain, that it is very convenient for a Church to have distinguishing Doctrines, provided they be good ones, unless a Church can be obliged to err for Company, and to avoid distinction, which will not very well agree with the Text, that *forbids us to follow a Multitude to do Evil*, nor with the Practice of the Primitive Christians, when the Orthodox were so few, in comparison, that had there not been some Names of Note among them, they would hardly have been reckoned a number. But it

agrees admirably well with the Principles of Popery, thus to avoid Diſtinction, which hath its Numbers to boaſt of, when nothing elſe is to be ſaid.

But there is one Lord, one Faith, one Baptiſm; and St. *Paul* reproves the *Corinthians*, becauſe one cry'd he was of *Paul*, and another of *Apollos*, a third of *Cephas*, and the fourth of *Chriſt*: And muſt not then thoſe that held one Lord, one Faith, one Baptiſm, neceſſarily diſtinguiſh themſelves from all that held more than one? And if ſome would ſay they were of *Paul*, and ſome of *Apollos*, and ſome of *Cephas*, might not others diſtinguiſh themſelves from them, by ſaying they were of *Chriſt*?

But by this Doctrine, you pretend, we diſtinguiſh ourſelves from all other Churches in the World, and ſo from the Catholick Church; and therefore you cannot comprehend, why any one ſhould value a Doctrine ſo much on that ſcore; but you may comprehend, if you pleaſe, that it was never pretended that this Doctrine is taught no where but in our Church; and, as I hope, I have proved that it was taught in the Primitive Church, and is taught in other Proteſtant Churches at this Day. But this is evident, by fatal Experience, that Paſſive Obedience is the diſtinguiſhing Character of the Church of *England* by Law eſtabliſhed; whereby it is diſtinguiſhed from the ſeparate Congregations among us, both of *Fanaticks* and *Papiſts*; and to juſtify this Diſtinction, we have the expreſs Teſtimony of ſeveral of our Princes ſince the *Reformation*, and of the Laws themſelves too, that are ſtill in force; which abundantly ſhew how dangerous the Principles of other Perſuaſions are to the State, as well as to the Church: Yet if other Churches have not ſo well preſerved this Doctrine in its Purity, as ours hath done, as we would not provoke them to a Compariſon, ſo we have no reaſon to be aſhamed of it. But that many among them have taught this Doctrine, might be proved from the Writings of many of the moſt learned and pious foreign Divines; and particularly from a Book of a *French* Proteſtant lately written, who in the midſt of Perſecutions writes in defence of Paſſive Obedience, when he at the ſame time ſuffered what we feared.

Traité du Pouvoir abſolu des Souverains, &c. *Cologne*, 1585.

F. Tho', I confeſs, at a time when it was made criminal for any Man publickly to maintain, that it was lawful to reſiſt, in caſe the King ſhould go about to introduce Popery and arbitrary Government among us by Force; and that whoſoever went about to aſſert the Lawfulneſs of ſuch Reſiſtance, was ſure to meet (if not with Puniſhment) at leaſt with loſs of Preferment, and Diſgrace; when the Doctrine of Paſſive Obedience ran ſo high both in the Preſs and Pulpits; it was no wonder if any of our Church, who conſulted their own Safety, durſt ſtem ſo violent a Current; and yet even in theſe Times, the learned Dr. *Falconer*, in his Treatiſe of *Chriſtian Loyalty*, *chap.* 5. §. 2. doth, tho' cautiouſly, allow Reſiſtance in ſuch great Caſes, as of a Prince's alienating his Kingdom, or of deſtroying his People in an hoſtile manner, to be lawful, if ever it ſhould happen: But out of a needleſs fear, leſt this Doctrine of Reſiſtance may be made uſe of as a Pretence for Rebellion, will allow it can ſcarce ſeem poſſible ever to happen in a King, *Compos mentis*, towards his whole Dominions. But I think I have already proved the poſſibility of it, and why they may not do the ſame in an abſolute Empire, where the Prince would make them Slaves and Beggars, by invading their Liberties and Properties, I can ſee no Reaſon, but think I have given very good ones for it.

But as for the other Perſon you mention, who did openly in Print oppoſe this Doctrine of Reſiſtance, whether he, or his Opponent, had the better in this Diſpute, I leave to the indifferent Readers, who, I believe, will acknowledge that the Author of that Treatiſe did not ſo much forfeit his Reputation, by aſſerting a Right of Defence, where the Religion and Liberty are eſtabliſhed by Law, and became a part of the Civil Conſtitution, as his Opponent did by introducing an arbitrary imperial Power in this Nation, unknown to our Laws, whereby a few mercenary Red-coats, either of this, or a Foreign Nation, ſhould have, by the King's Commiſſion, an irreſiſtible Power over the Lives, Liberties and Eſtates of all Proteſtants. But ſince he went about to make us all Slaves by his Imperial Law, I do not at all envy him ſo generous a Performance; and yet for all that, I had much rather have that Man's Reputation, whom he oppoſed, tho' with all his Suffering, than this Gentleman's, tho' attended with all his Learning and Preferments.

But as for what you ſay in Vindication of the Doctrine of Paſſive Obedience and Non-reſiſtance in all Caſes whatſoever, it ſignifies little, ſince it is grounded upon a wrong Suppoſition; for you ſtill take that for granted which is the Queſtion yet to be proved, that becauſe the Primitive Chriſtians were againſt Reſiſtance, in caſe of Perſecution, therefore this muſt needs extend to whole Nations and Commonwealths, in all States and Conditions whatſoever; which, whether you have well proved or not, I leave it to your own Conſcience to judge; for my own part, I cannot ſay you have convinced me with what you have ſaid on this Subject: So that if theſe Doctrines, as you have put them, are neither good in themſelves, nor neceſſary to be believed or practiſed in all Caſes, I doubt God may juſtly ask thoſe who either practiſe or impoſe them on others, *Who hath required theſe things at your Hands?* And as for thoſe Divines of foreign Churches, who, you ſay, have writ for theſe Doctrines as well as ours; as I know not who they are, nor in what manner they have defended them, ſo do I not much value their Opinion, ſince there are many more altogether as Learned and Pious as they, who have held the contrary. Nor are all Divines who maintain Paſſive Obedience and Non-reſiſtance of your ſide, who write (which I alſo allow) that for particular private Subjects to reſiſt Princes in revenge of private Injuries, and rebel againſt the Supreme Powers for not being of their own Religion; or to take upon them to call Princes to an Account, or paſs Judgment upon them, or puniſh them for their Actions, is altogether wicked and unlawful: Yet doth it not therefore follow that they have maintain'd all Reſiſtance to be unlawful, in any Caſe whatſoever; tho' perhaps, if you were to make uſe of their Authority, you would produce them of your own ſide.

To conclude, I own myſelf for Non-reſiſtance, in that limited ſenſe I have now given, as far as it extends to particular private Men; yet that this Rule doth not extend to the whole Civil Society or People; and therefore, altho' in my own private Capacity, I ought to ſubmit to, and ſuffer the greateſt Injuſtice, rather than reſiſt and diſturb Government; yet when the main Foundations thereof are once begun to be pulled up, as I am an *Engliſh-man*, I think I am more obliged, by all Ties both Sacred and Civil, to defend and maintain the Government or Conſtitution, of which I am a Member, than I am to obey the King's perſonal Commands; and that being the primary Obligation, ought to be diſcharged in the firſt place.

M. I ſhall no longer compare, whether the Divines that write for, or thoſe that write againſt Reſiſtance, are the wiſer or more learned, ſince you yourſelf, it ſeems, at laſt, are feign to own a limited Non-reſiſtance, which you will have extend to private Perſons, but not to the whole Civil Society or People: But I think I may venture ſtill to maintain, that the Supreme Power, where ever it is placed, muſt be Irreſiſtible; and that a whole Civil Society or People, who are not inveſted with part of the Sovereignty, can have no more Right to reſiſt than ſingle Perſons: For to ſay that whole Societies have a Power to reſiſt, and that particular private Perſons, as Members thereof, have it alſo, is ſuch a diminution of Supreme Power, as can never be conſiſtent with it; for all Inferiors, whether private Perſons or whole Societies, can have no Power but what is derived from the Supreme; and therefore, if they have a Right to reſiſt, even that muſt be derived from the Supreme Power, and ſo that Power muſt deſtroy itſelf.

But as for what you alledge in your Juſtification, that Reſiſtance may be lawful, to avoid Subverſion of the Government: To this I may reply, that if Subjects be no longer in ſubjection to the Supreme Powers, the Government is hereby deſtroyed; for what more manifeſt Subverſion can there be than this, *That Subjects are now no longer in Subjection, nor Governors can be no longer able to govern?* So that this Argument tends only to prove, that Subjects may ſubvert the Government one way, rather than ſuffer the Sovereign Power to do it another. So that upon the whole Matter, if the Government muſt be ſubverted, you would have no Body have the doing of it but yourſelves.

F. However falſe your Premiſes are, and however weak the Proofs that you have brought for them, yet I ſee you are reſolv'd to ſtick cloſe to your Concluſion, (*i. e.*) that all Supreme Powers are abſolutely irreſiſtible. In which Diſpute, whether you or I have been in the wrong, I dare appeal to any indifferent Judge; for I think I have ſufficiently made out, that Reſiſtance by the whole People, or

major part of it, againſt a general and intolerable Tyranny, is no diminution of Supreme Civil Power, nor inconſiſtent with it: Nor is your Reaſon for your Opinion any truer than the reſt, that private Perſons, whether taken ſingle or in a whole Civil Society, can have no Power but what is derived from the Supreme, which is by no means ſo; for every private Man of the Society then acts by a Power precedent to it, *viz.* the natural Power of Self-preſervation or Defence, which no Man ever abſolutely gave up, neither for himſelf nor his Children, when he became a Member of that Commonwealth, tho' he was obliged, for the Peace of the Government or Civil Society, to ſuſpend that Right in order to a greater Good, which once failing, upon the Diſſolution of the Government, every Man's original Right takes place.

As for what you ſay againſt my Notion, that Reſiſtance is lawful, when it may prevent the Subverſion of the Government, your Reply to this is really equivocal, and conſiſts in that falſe or wrong Notion you have of the nature of our *Engliſh* Government, which you ſuppoſe only conſiſts in the Preſervation of the King's Perſonal Power, without any reſpect to the Laws or fundamental Conſtitutions of the Kingdom; and that as long as the People are in Subjection, whether to legal Government or illegal Force, it is all one, the Government is ſtill preſerved; which is a great miſtake: For the King receiving his Power from the Law, and having no Authority but what that gives him, when he overthrows the fundamental Conſtitutions of the Kingdom, he doth himſelf deſtroy the Government. And therefore, when in that Caſe the People do reſiſt, it is either to maintain it, or elſe to reſtore it to the State that in was in before; ſo that it is not the People, in this Caſe, who have ſubverted it, but the King himſelf.

M. It now grows late, and it is high time to give over; but if you pleaſe to give me another Meeting, I doubt not but to ſhew you, that by the Original Conſtitution of this Government, the King not only hath the ſole Supreme Power, but that by ſeveral Acts of Parliament all Reſiſtance of the King, or thoſe commiſſioned by him, is abſolutely againſt the Laws and fundamental Conſtitutions of this Kingdom; and that they are all, by our Laws, Rebels, that dare preſume to make any ſuch unlawful Reſiſtance: And I deſire that you would give me a patient hearing in this Matter, becauſe I have ſo great a kindneſs for you, that I would not have you lie under ſo dangerous an Error, which may happen to prove fatal to your Happineſs, not only in the World to come, but alſo to the Safety of yourſelf and Family in this Life, if you ſhould offer to put in practice what you have here maintained.

F. Sir, I give you many thanks for your kind Intentions towards me, ſince I do believe it proceeds from that real Friendſhip you have for me; tho' as for the former of thoſe Judgments you mention, I hope I ſhall have no reaſon to be afraid, of it, for any thing I can yet ſee from thoſe Arguments you have hitherto urged: But as for what may happen to me in this Life, I hope I have as little reaſon to fear it, ſince I believe this great Revolution will not only juſtify, but for the future defend thoſe Arms that have been taken up for the reſtoring the true antient Government of the Kingdom.

M. I confeſs, Sir, that you have now too much the advantage of me, during theſe Times of Anarchy and Confuſion; but yet I hope one Day to ſee this unhappy Nation again recovered from this ſad Apoſtacy, into which, I confeſs, too many have lapſed; and then I doubt not but theſe Primitive and Loyal Doctrines of Paſſive Obedience and Non-reſiſtance will be again reſtored to their former Integrity and Vigour.

F. Well, Sir, all I can ſay to you is, that I ſee you are not only in love with Slavery, but alſo with thoſe that would bring it in upon us; yet however, I think I may give you this good Advice, that if you are not pleaſed with what hath been already done, ſince you have had no hand in the doing of it, you would be contented quietly to ſit ſtill and enjoy thoſe Benefits that may thereby accrue to the whole Church and Nation; ſince I thereby expect a firmer Settlement of the Proteſtant Religion, as alſo of our Civil Liberties, than we ever yet enjoyed.

M. I thank you for your Advice, and you know, as my Humor is not to be troublesome or clamorous againſt that which is not in my Power to help; ſo on the other ſide, I heartily wiſh that the Prince may now agree with his Majeſty upon ſuch Terms as may prove for the good of the Church and Security of the State. But pray tell me when I may be ſo happy as to ſee you here again, that we may fully reſolve this laſt Queſtion?

F. To Morrow I ſhall be engaged, but the Day after being one of the *Chriſtmas* Holy-days, I ſhall not fail to wait on you at the ſame Hour, and am very well pleaſed to wait on you here, ſince I foreſee a great part of our next Converſation will depend upon Authorities out of Books, with which your Study is very well furniſhed, and my own are not in Town.

M. I ſhall expect your coming with impatience, and in the mean time I am your humble Servant.

F. Sir, I am yours.

Bibliotheca Politica.

DIALOGUE V.

Whether the King be the ſole Supreme Legiſlative Power of the Kingdom; and whether our Great Councils, or Parliaments, be a Fundamental Part of the Government, or elſe proceeded from the Favour and Conceſſions of former Kings.

M. YOU are welcome, Sir; I pray ſit down by the Fire. I was thinking before you came in, of the beſt Method of managing this *important Queſtion*, whether by the Laws and Conſtitutions of this Kingdom, it can in any Caſe whatever be lawful to reſiſt the King, or thoſe that act by vertue of his Commiſſions. I ſhall therefore proceed in the next place, to the Proof of the ſecond Propoſition, in the Argument I at firſt propoſed; or, to ſpeak logically, the Minor in the Syllogiſm, *viz.* That the King of *England* is the ſole Supreme, or Sovereign Power in this Kingdom, and therefore is irreſiſtable, and that not only as to his own Perſon, but alſo with reſpect to all ſuch who act by his Orders or Commiſſions, though the things commanded be in themſelves illegal.

F. I do not diſlike your Method, though if you could never ſo plainly make out to me the Truth of this Minor Propoſition, yet it will come too late to prove, that all Reſiſtance of Supreme Powers is unlawful in all Caſes whatever, ſince I think you have failed in the Proof of that your firſt Propoſition. But ſince I do not deny the Truth of this ſecond Propoſition in ſome Senſe, I pray be as ſhort as you can in the Proof of it.

M. I ſhall obſerve your Deſire; and ſhall briefly recite ſome Authorities, as well antient as modern, as alſo Acts of Parliament, which declare an abſolute and Imperial Power to be ſolely in the King. To begin with the *Saxon* Times: Firſt, as to the Title of *King* or *Emperor* uſed promiſcuouſly; our King *Edgar* frequently in his Charters calls himſelf, *Albionis & Anglorum Baſileus*, and the *Grecians* eſteemed the Word Βασιλευς to be of full as eminent a Signification, as Emperor: And King *Edward* the Confeſſor, in a Charter to the Abbey of *Peterburg*, ſtiles himſelf *Rex Anglorum*, and his Government a Monarchy: And King *Ethelred*, in his Charter to *Canterbury*, ſtiles himſelf *Angligenum, Orcadarum, necnon in Gyrojacentium Monarchia, & Anglorum Induperator*. So that you hereby may ſee, that the Kings of *England*, long before the Conqueſt, look'd upon themſelves as Emperors

J. E. M. G. c. 17. p. 122. & dein.

Cad. Vigorn. & Monaſt. Ang. part. 2. p. 64.

Emperors, or abſolute Civil Sovereigns. So likewiſe after that time we find *W. Rufus* dates his Charter to the Monaſtery of *Shafisbury*, *Secundo anno Imperii mei*: And though the Title of Emperor hath been diſuſed, yet we ſhall find the Subſtance of it ſufficiently challenged in that Letter of *W. Rufus* to Archbiſhop *Anſelm*, telling him, *That he had all the Liberties in his Kingdom, which the Emperor challenged in the Empire*: And the like was challenged by *Henry* the Firſt in all his Diſputes with the Pope concerning the Inveſtiture of Biſhops and Abbots; and in all the Statutes of *Premunire* made by *Edward* the Third, the King's Sovereignty independent from the See of *Rome*, is expreſly aſſerted: And the Statute of the 16th of *Richard* the Second declares; *That the Crown of England hath ever been ſo free, that it is under no earthly Subjection; but immediately ſubject to God in all things, touching the Regality of the Crown, and to no other.* And the Statutes of the 24th and 25th of *Henry* the Eighth ſet forth, *That this Realm of England is an Empire governed by one Supreme Head and King, and the Crown or Royal Authority is alſo thereby declared Imperial*; and the Kings of *England* are therein *ſtiled Kings or Emperors* of this *Realm*. So that I think, no Man needs to doubt where the Supreme or Sovereign Power of this Kingdom reſides.

Vid. Mat. Paris in vita Will. II.

F. I will not deny any of thoſe Authorities you have now made uſe of: Yet *Titles alone are no Proofs of Power*; for it is very well known, that the *German* Emperor, notwithſtanding that great Title, is not therefore *unaccountable* or *irreſiſtable*; ſince the College of the Princes Electors may depoſe him for Male-adminiſtration, or for violating any of the fundamental Conſtitutions of the Empire. And Mr. *Selden* hath very well obſerved, in his *Titles of Honour*, that this Supremacy, or Freedom from all Subjection, is not only challenged by our *Engliſh* Sovereigns; but alſo by the Kings of *Denmark*, *Sweden*, and *Poland*: The former of which yet was ſo far from being an abſolute Monarch, that before the Reign of this King's Father he might have been depoſed for Tyranny, or Miſgovernment, by the *Eſtates of the Kingdom*, as the King of *Poland* may at this day. And therefore theſe Titles may indeed prove a Freedom from all foreign Juriſdiction; but do not prove that the King is endued with an abſolute Sovereign Power within the Kingdom, as you may ſee in theſe Examples I have now given you.

M. If you are not ſatisfied with theſe Proofs, I doubt not but to give you other Authorities, both out of antient and modern Lawyers, as alſo Acts of Parliament, which ſufficiently declare where the Supreme or Sovereign Power reſides. In the firſt place, I ſuppoſe you will not deny, but that it hath been the Prerogative of the Kings of *England*, time out of Mind, to coin Money, diſpoſe of all Offices, and create new Dignities, as he ſhould think fit; as alſo to make War and Peace, to make Laws; and in ſhort, to do all things whatſoever that are eſſential to a Monarch. And that he alone is the ſole ſovereign Power in this Kingdom, excluſive of all others, our antient Lawyers, *Glanvil* and *Forteſcue*, plainly declare; the former of which ſays thus: *Rex nullum habere poteſt parem, multo minus ſuperiorem.* The ſame thing is alſo repeated by *Bracton*, and a very good Reaſon given for it, in theſe Words: *Omnis quidem ſub Eo, & ipſe ſub nullo, niſi tantum ſub Deo, parem non habet in regno ſuo, quia ſic amitteret præceptum,* cum par in parem non habet imperium: Item nec multo fortius ſuperiorem nec potentiorem habere debet, quia ſic eſſet inferior ſibi ſubjectis, & inferiores pares eſſe non poſſunt potentioribus.*

Lib. 7. c. 10.

Lib. 3. c. 9.

* *i. e.* His Power of Commanding.

F. But pray read what immediately follows: *Ipſe autem Rex non debet eſſe ſub Homine, ſed ſub Deo & ſub Lege, quia Lex facit Regem; attribuat igitur Rex Legi quod Lex attribuit ei, viz. dominationem & poteſtatem: non eſt enim Rex ubi dominatur Voluntas, & non Lex.* And though, I grant, the King is ſubject or inferior to no particular private Man; yet that he hath a Superior or Maſter within the Kingdom, beſides God and the Law (and ſo is not the ſole Supreme Power) appears by a Paſſage out of the ſame Author, in the ſecond Book: *Rex habet ſuperiorem Deum, item Legem, per quam factus eſt Rex; item Curiam ſuam, viz. Comites & Barones, quia Comites dicuntur quaſi Socii Regis, & qui habet Socium habet Magiſtrum: & ideo ſi Rex fuerit ſine freno, i. e. Lege, debent ei frænum ponere.* From which Words it ſeems apparent to me, that this Author thought the King was not only inferior to the Law, but alſo to his Court of Parliament, called here *Curia Baronum*, who might bridle or reſtrain him, if he tranſgreſs'd the Laws, which are here called the *King's Bridle*. Nor can I conceive how this could be done, without ſome kind of Force or Conſtraint, if he refuſe to receive this Bridle they would lay upon him.

C. 16.

M. I do not desire at this time to enter upon this Question, concerning that Power, which I know some Parliaments have pretended to, of *curbing* and *resisting* the King by force, if they supposed he invaded the fundamental Rights and Liberties (as they call them) of the Nation; and that for two Reasons: First, because it is not pertinent to our present purpose, of proving that the King is not the sole Supreme Power: As also because you very well know, that both Houses did, in 13 *Car.* 2. by an Act of Parliament concerning the *Militia*, solemnly renounce all *coercive Power* over the King, or any Right in either, or both of the Two Houses, of making Offensive or Defensive War against him. But if you have a mind hereafter to discourse further on this Subject, I doubt not but to prove to you from divers other Passages out of *Bracton*, and that old Treatise called *Fleta*, that it was no *Political Superiority* in the *Curia Baronum*, but only a *directive Power*; or moral Superiority, which they had of advertizing the King of any arbitrary Proceeding or Injustice he should happen to do; and by Complaint, Admonition, and Entreating, to impose upon him to amend the same, according to his Oath; but not by Coaction or Constraint. And in this sense they may be said (in a moral way) to put the Bridle of the Law upon him, which may be called *Civil Resistance*; but as for *Military Resistance* against an unjust King, it is as inconsistent with our *English* Government, as with any other Monarchy in the World.

H. D. L. p. 41.

But you very much mistake, if you suppose that the King of *England* is not Supreme, because he is *limited by Laws*; which really is no Objection, because a Sovereign, without any Diminution to his Sovereignty, may be limited in the Exercise of his Sovereign Power, either by his own Acts or Condescensions, or else by those of his Predecessors, under whom he claims. This is so certain, that there is no Supreme Power in Heaven or in Earth, which is not limited and confined in the Exercise thereof. Thus the Omnipotent Power of God himself is limited by his own Wisdom, Goodness and Justice, which are himself. So likewise the Powers of all Absolute Unlimited Monarchs are only so comparatively, with respect to positive Laws; but as for the Laws of God and Nature, which bind their Consciences as firmly as any Civil Laws, they are bound to observe them, and exercise their Sovereign Power within those Limits which they set and prescribe. For whether they have their Supreme Power from *God*, as we say, or from the *People*, as you alledge, it is all one as to this matter; for they can have no Right, neither from God nor the People, to make unjust and tyrannical Laws. And this Political Limitation of their Power, in the Exercise of it, doth no more destroy the Essence thereof, than its flowing in Pipes or Channels destroys the Essence of a Spring; since it is still the same, whether it runs confined through Pipes, or flows free and unconfined through the open Field. The Application is obvious.

Ibid. p. 29.

But as for the precedent Words in this Place of *Bracton*, which seem to intimate, that the King owes his Authority to Law; he there only means the King in opposition or contradiction to a *Tyrant*, who makes his Will his Law, according to that of Chancellor *Fortescue*: *Rex est ubi bene regit, Tyrannus, dum populum sibi creditum violenta opprimit dominatione; quod hoc sanxit Lex humana, quod Leges ligant suum latorem.* Where you may observe, that this Author makes a King's governing well, *i. e.* according to Law, a Mark of Distinction from a Tyrant, who oppresses his Subjects by a violent Domineering over them. And though he here supposes the King to be obliged by the Laws, yet that this Obligation is only Moral, appears by what immediately follows, when he says, *the Laws do oblige their Legislator.* Now if the King be the sole Legislator (as he here seems to intimate) he must also be the sole Supreme Power; and if so, cannot be accountable to, or under the Coercion of any Superior Power; for then he would not be Supreme, as you your self have granted long since.

F. Since you are not willing to enter upon that antient Power, which you cannot deny but the *Great Council* formerly had, of putting a Bridle upon the *King*, and restraining his Actions, in case he invaded the Rights or Liberties of the People; I shall not insist farther upon it now, for the Reasons you have given; only I must make bold to tell you thus much, that if they have not a Power of defending their just Rights, if forcibly invaded by the King, it would be all one as if they had none at all. Tho' I grant, that what you have said concerning the Limitation of the Exercise of Sovereign Power, that it doth not derogate from the Absoluteness of the Power itself, is very true in all such Limitations which proceed from the

the intrinſick Nature and Perfection of the Being in which it reſides; as in your Example of God's infinite Power, being limited by his other Attributes. So likewiſe all humane Power (I own) are limited by the Revealed Laws of God, or thoſe of Nature: But as to poſitive Laws you yourſelf aſſert, that abſolute Monarchs are only obliged by them as long as they pleaſe; and conſequently, that they may alter them, or derogate from them, as oft as they think good; as the *Roman* Emperors could revoke any Privileges or Immunities they had formerly granted to particular Perſons, Cities, nay to Tributary Kings, or Commonwealths; and all this very juſtly, becauſe as all ſuch Grants were made only for the publick Good of the Empire, ſo they being the ſole Judges thereof, when ever they found ſuch Conceſſions to prove prejudicial to it, they might juſtly alter or revoke them. Now if the Power of our Kings be as abſolutely Sovereign as that of the *Roman* Emperors; and only limited by their own free *Grants* or *Condeſcenſions* to the People, and not from any Power *ab extra*; ſuch Grants or Condeſcenſions, though never ſo ſolemnly paſt into Laws in the Parliament, or Aſſembly of the States, are ſtill no more than poſitive Laws: And then if the King is the ſole Sovereign Power (unlimited by any thing *ab extra*) how he can ſo tie up his own Hands, as that he may not break or reſcind all thoſe Conceſſions he had made; and thoſe Limitations which he had put upon himſelf, if he think or declare it is for the better benefit of the Commonwealth ſo to do; I cannot comprehend, if he be, by the Original Conſtitution, the ſole Lawmaker and Judge of what is for the publick Good: Much leſs can I underſtand how he can oblige his Succeſſors (who muſt ſtill be ſuppoſed as abſolute Monarchs as himſelf) to obſerve them. And therefore if all our Civil Rights and Liberties, were no other than what you would have them (the *free Condeſcenſions* or *Self-Limitations* of Sovereign Power) I deſire you would ſhew me what Security we can have for the Enjoyments of them longer than the King pleaſes: For it ſeems plain to me, that whenever he ſhall fancy the Liberties and Properties of the Subjects (both which you ſuppoſe were derived from him) to be injurious to, or inconſiſtent with his Prerogative, or Sovereign Power, he may lawfully diſannul or revoke them: And in what Caſe we then ſhould be (conſidering how things had like to have gone lately) I leave any indifferent Man to judge.

Nor is your Interpretation of *Bracton's* Words, *Lex facit Regem, &c.* any more than an abſolute wreſting of them from their true Meaning, which is not (as you would have it) to diſtinguiſh a King that governs by Law, from a Tyrant that makes his Will his Law: For every abſolute Monarch that doth ſo is not a Tyrant, provided he direct his Actions according to the Laws of God and Nature, as you yourſelf aſſert; and a Prince may as well govern thus as the great *Turk*, *Czar* of *Muſcovy*, and all the Eaſtern Monarchs do at this Day, who are not counted Tyrants in ſo doing: But certainly you will ſay, that he would make a very ſcurvy *Engliſh* King, who would obſerve no other Rule. Nor do you leſs wreſt *Forteſcue's* Words, when you render them, *Rex eſt ubi beneregit, Tyrannus, &c.* Suppoſing the meaning of it to be, that this Author makes a King's governing (that is, ſay you) according to Law, the only thing to diſtinguiſh him from a Tyrant, *&c.* Whereas he ſays no ſuch matter; but only *Rex eſt, ubi bene regit*, which he may do without any ſet Laws, as well as with them; as the firſt Kings you ſuppoſe did before they were limited by Laws.

But as for *Forteſcue's* ſuppoſing the King to be the *ſole Legiſlator*, that Word *ſole* is of your own addition; for if he had ſaid ſo, he would have contradicted himſelf, as I ſhall ſhew you preſently. It is true, the King hath a great ſhare in the Legiſlative; yet hath he two other Bodies to join with him by a concurrent or co-operative Power in it; and I think I have all the antient Lawyers of *England* on my ſide. To begin therefore with *Ranulph de Glanville*, who was Chief Juſticiary in the Reign of *Henry* the Second: He gives us, in his Prologue to his Treatiſe of the Laws of *England*, this Teſtimony: *Leges namque Anglicanas, licet non ſcriptas, Leges appellari non videtur abſurdum (cum hoc ipſum Lex ſit, quod Principi placet, & Legis habet vigorem) eas ſcilicet, quæ, ſuper dubiis in conſilio definiendis, Procerum quidem conſilio, & Principis accedente authoritate, conſtat eſſe promulgatas.* So likewiſe *Bracton*, in his very firſt Chapter, ſpeaks much to the ſame purpoſe: *Cum Legis vigorem habeat, quicquid de conſilio & de conſenſu Magnatum, & Reipublicæ communi ſponſione, au-*

thoritate Principis præcedente, juſte fuerit definitum & approbatum. And alſo in his third Book, Chap. 2. when he ſpeaks of the antient manner of making Laws in *England*, he ſays: *Quæ quidem fuerint approbatæ conſenſu Utentium, & ſacramento Regum confirmatæ, non poſſunt mutari nec deſtrui ſine communi conſenſu Utentium, & conſilio eorum, quorum conſilio & conſenſu fuerint promulgatæ.* Where you may ſee theſe antient Authors plainly declare, that nothing hath the force of a Law in this Kingdom, but what is approved of and conſented to by all Orders of Men, either by themſelves or their Repreſentatives: And, which is very remarkable, *Bracton* ſuppoſes the King's Authority, or Royal Sanction of a Law, may precede the Conſent of the Great Council; which quite deſtroys that Notion, that it is the King's giving his laſt Aſſent, which gives it the Eſſence and Vigour of a Law.

And with theſe more antient Sages of the Law *Forteſcue* alſo agrees in his 9th Chapter *De Laudibus Legum Angliæ*, where he ſays: *Rex Angliæ populum gubernat, non mera poteſtate regia, ſed politica: populus etenim iis legibus gubernatur quas ipſe fert*, &c. What follows is word for word the ſame with what *Bracton* had before in his firſt Chapter, and therefore needs not to be repeated: So likewiſe in the 18th Chapter, ſpeaking of the *Abſolute Legiſlative Power* of Kings in ſome other Kingdoms, he thus proceeds: *Sed non ſic Angliæ ſtatuta oriri poſſunt, dum nedum Principis voluntate, ſed & totius regni aſſenſu ipſa conduntur, quo Populi læſuram nequiunt, vel non eorum commodum procurare.* But if they after prove inconvenient, he immediately adds: *Concito reformari ipſa poſſunt, ſed non ſine* Communitatis *& Procerum regni illius aſſenſu, quali ipſa primitus emanarunt.* To which I may alſo add an Authority out of that Learned Author *St. German*, in his Dialogue called the *Doctor and Student*, written in Latin, in the 10th Chapter, entituled, *De ſexto fundamento Legis Angliæ.* The Student thus ſpeaks: *Sextum fundamentum Legis Angliæ ſtat in diverſis Statutis per Dominum Regem, & Progenitores ſuos, & per Dominos Spirituales & Temporales, & per* Communitatem *totius regni in Parliamentis, editis; ubi Lex rationis, Lex divina, Conſuetudines, Maxima ſive alia fundamenta Legis Angliæ prius ſufficere minime videbantur.* Where you ſee the *Legiſlative Power* is here attributed to the Lords and Commons jointly with the King. And therefore my Lord *Coke*, in his Notes upon the Statute of *Weſtminſter*, I. calls it a *Compleat Parliament*, as conſiſting of all the Eſtates neceſſary thereunto: *For*, ſays he, *a Parliament, making or enacting Laws, conſiſts of the King, the Lords Spiritual and Temporal, and Commons; and it is no Act of Parliament, unleſs it be made by the King, Lords and Commons.*

M. I ſhall not much concern my ſelf with what your Common Lawyers, either antient or modern, have writ upon this matter; much leſs what Sir *Edward Coke*, a known Enemy to the King's Prerogative, doth maintain: Since I have as good
P. 3. *a. b.* or a better Authority than he, *viz.* that of the *Year-Book* of 22 *Ed.* 3. wherein it is expreſly declared by divers Earls and Barons, and by all the Juſtices, in the Caſe of one *Headlow* and his Wife, who had a Suit with the King, *That the King makes the Laws by the Aſſent of the Lords and Commons*, and not *the Lords and Commons*; and that he could have no Peer in his own Land, and that the King ought not to be judged by them. So that it is, I think, evident, that the Laws are primarily and properly made by the King, and that the two Houſes may have a *co-operative*, but no co-ordinate Power with him. And though at this Day I grant, that Cuſtom hath made the Aſſent of the Lords and Commons neceſſary to the paſſing of all Laws, yet it is ſtill the King's Word, or *le Roy le veule*, that makes them ſo: And I much doubt, whether even this were part of the antient Conſtitution of this Kingdom or not, or proceeded at firſt from the gracious Favour and Permiſſion of former Kings, as I could ſhew by a Series of Councils in the *Saxon* Times, if it were not too tedious to mention them particularly; therefore I ſhall only ſelect ſome of the moſt remarkable.

For though I confeſs, the *Engliſh Saxon* Kings performed all great and conſiderable things by the Counſel and Advice of their Biſhops and Noblemen, comprehended under the general Names of *Wites*; yet you will find by the Titles of almoſt all the Councils in *Spelman*, *Lambard*, &c. that theſe Kings alone made their Laws, though by the Advice and Counſel of their *Wittena Gemote*; which was then no other than the King's Greater Council, ſince he called what Great Men and Biſhops he pleaſed to it, and omitted the reſt: And it is never mentioned, that
J. E. M. G. p. 151. they were made by their Conſent, as neceſſary thereunto. Nay, ſometimes we find that ſome of the antient *Saxon* Kings made Laws without the Aſſent of their

Great

Great Council. Thus *Offa*, King of the *Mercians*, being at *Rome*, out of his Royal Munificence, gave to the Support of the People of his Kingdom, that ſhould come thither, a Penny to be paid Yearly for ever out of every Family, whoſe Goods in the Fields exceeded the Value of Thirty Pence. And this he made a perpetual Conſtitution throughout all his Dominions, excepting the Lands conferred upon the Monaſtery of *St. Albans*. This Impoſition and Law continued a long while in force, though we find it not confirmed by any *Great Councils* in the Time of his Succeſſors; only in the Laws of King *Edgar* and King *Edward* it is enjoined to be paid as the King's *Alms*; which implies it was the King's Gift, and ſolely his, without the Conſent of a *Great Council*.

Vid. Mat. Paris in vita Offæ, p. 171.

Vi. Spelman's *Councils.*

But to give you a more particular Proof of the Supreme and Abſolute Power of our *Saxon* Kings, as well during the *Heptarchy* as afterwards, in making and eſtabliſhing Laws; I ſhall begin with the firſt we have extant, which are thoſe of *Ina*, King of the *Weſt-Saxons*, who began his Reign *An.* 712. In the Preface to his Laws we find it thus expreſs'd, which I ſhall render out of the *Saxons* Copy, publiſhed by Mr. *Lambard*: *I* Ina, *by or with God's Gift, King of the* Weſt-Saxons, *with the Advice or Council of* Cenred *my Father, and* Heddes *my Biſhop, and* Ercenwold *my Biſhop, and with my Aldermen, and eldeſt Wites, or Wiſe Men of my Kingdom, do command*, &c. Then in the firſt Chapter the King ſpeaks in the firſt Perſon Plural: *We bid or command, that all our People ſhall after hold faſt or obſerve theſe Laws and Dooms.* From this Preface you may obſerve, 1. That Kings are the Gift of God, and that *God's Gift* ſignified the ſame with *Dei Gratia*; they are not the Creature of the People. 2. That Princes, for the better Government of their People, in the ſettling of Laws in Church and State, did then Conſult, Deliberate, and Adviſe with their Biſhops, Noblemen, and eminently Wiſe Men of their Kingdoms, whom for their Wiſdom they honour'd with publick Employments in their Dominions. 3. That after ſuch Conſultation, Deliberation, and Advice, the Sovereign eſtabliſheth and makes the Laws.

J. E. M. G. p. 190. & *dein.*

Vid. Lambard. Archaionom. in the Laws of K. *Ina*, p. 1.

The next Inſtance I ſhall make uſe of, is out of the ſame Author, in the Laws of King *Alfred*, where, in the Concluſion of his Laws about Religion, and prefatory to the Secular Laws, he ſaith, *I* Alfred, *King, have gathered theſe (Sanctions) together, and cauſed them to be written*; and then recites, that thoſe that he liked not, with the Council of his *Wites*, he had rejected; and thoſe he liked, he bad or commanded to be holden. And we may obſerve, that the King here ſpeaks in the ſingle Perſon, that He himſelf *collected* or *choſe*, and alſo *rejected*, what Laws he pleaſed. The next material Illuſtration where the *Legiſlative Power* then reſided, may be found in the Laws of King *Edward* the Elder, where, after the Charge given to the Judges, the firſt Law begins, *I WILL*; and ſo in others. In the 4th it is thus expreſſed: Edward *the King, with his Wites, that were at* Exeter, *ſtrictly enquiring by what means it might be better provided for Peace and Tranquility*, &c. In the 2d and 3d Chapter it is: *WE alſo Declare, Pronounce*, or Sentence: And in the 7th, *And I WILL*. In which Laws we have none mentioned with the King, but his *Wites*; and his Commanding, Willing, or Pronouncing in the Imperative Mood, is obſervable.

Ibid. 21.

The next Laws I find are thoſe of King *Athelſtan*, which begin thus: *I* Athelſtan, *King, with the Advice of* Walfelm *my High Biſhop, and other my Biſhops, commanded or bid all my Rieves* (i. e. *Præfects*) *of what Degree ſoever, to pay Tythes*, &c. And this he commanded his Biſhops, his Aldermen, and *Præpoſiti* (who were the Judges in the Country Courts) to do the ſame. In theſe Laws, We, *Cwædon*, is uſed, which, I ſuppoſe, is ſomething more than *Somner* underſtands by his *Cuide*, a Saying, Speech, or Sentence, and properly is, *We will*. But the Abſoluteneſs of the King appears moſt in the 26th Chapter, wherein it is expreſſed, *That if any of the* Græves (i. e. *Judges*) *do not perform theſe Commands, or be remiſs in the Execution of thoſe he hath enjoined, he ſhall be puniſhed for his Exceſs of Contumacy, according to the Fines there ſet down.*

Ibid. p. 45. *Spel. Concil.* p. 396.

King *Edmund* is the next of our Kings, whoſe Laws are transferred to us, and the Proem tells us, that King *Edmund aſſembled a Great Synod* (or Council) *to* London, *at the Holy* Eaſter Tide: And the Perſons ſummoned are ſtiled *Godskind* and *Worldskind*, i. e. *Clergy* and *Laicks*. After the firſt ſix Chapters of Laws, in the Proem to the ſecond Part of them, *The King ſignifies to all Men, Old and Young, that he had ask'd Advice in the Aſſembly of his Wites, both Eccleſiaſticks and Laicks*: And in

Spel. Concil. p. 419. 21. *An. Ch.* 944.

the Laws it is often ſaid, *Thonne cwaedon*, Theſe we pronounce or appoint; and ſometimes the ſingle Perſon is uſed; and in other places, *Us betweonan' heoldan*, It is holden betwixt us. Here we find the Great Council ſummoned by the King, and the conſtituent Parts of it to be the Clergy and Laity; yet ſtill we find the Legiſlative Power in the *King alone*.

Ibid. p. 444. *An. Ch.* 967. *Ibid.* p. 455. So likewiſe in the Title to King *Edgar's* Eccleſiaſtical Laws, it is thus: *The Laws which King* Edgar, *in a frequent Aſſembly or Council of the Servants of God, hath ordained.* Whereby you may ſee, that the Enacting Part relates wholly to himſelf. The ſame King *Edgar*, in his Charter to *Glaſtonbury Abby*, concludes it thus: *Hanc privilegii paginam Rex* Edgarus, *anno* 12 *regni ſui, ſacro ſcripto apud* Londoniam *communi Concilio optimatum ſuorum confirmavit.* So that though it appears this was in the Preſence of a Great Council; yet the Granting and Enacting Part proceeded wholly from Himſelf.

Concil. 552. The Preface to the Laws of King *Canutus*, in Sir *Henry Spelman*, runs thus: *Theſe are the Worldly Conſtitutions, that I Will or Command, with my* Wites *Advice, that Men hold all over* England. In moſt of the Chapters it is ſaid, *We teach, We bid*, or *command, We forbid:* And in the Concluſion, it is in the ſingle Perſon of the King, *Now I command all, and bid every Man in God's Name.* And the Preface to the *Latin* Verſion of them ſaith, *Hæc ſunt Inſtituta Cnudi Regis Anglorum, Dacorum, Norwegarum, venerando ſapientum concilio ejus, ad laudem & gloriam Dei, & ſuam Regalitatem*, &c. Of this *Canutus*, *William* of *Malmsbury* ſaith, that he commanded to be obſerved for ever all the Laws of antient Kings, eſpecially thoſe made by King *Ethelred* his Predeceſſor, under the Penalty of the King's Fine, to the obſerving of which, he ſaith, that in his own time they were ſworn to, under the Name of King *Edward's* Laws; not that he had appointed them, but had obſerved them. So that I think, upon the whole matter, nothing is more plain, than that our *Engliſh*, *Saxon*, and *Daniſh* Kings, did not only call Councils, and preſide in them, but that the *Legiſlative Power* was lodged ſolely in themſelves.

Geſt. Regum lib. 2. *c.* 11.

F. I perceive the Authority of our ancient Lawyers is a little too hard for you to anſwer with your uſual Diſtinctions; and therefore you ſeemingly deny their Authority, though in effect you grant it, as I ſhall ſhew you by and by: But as for your Quotation out of the *Year-Book*, which you think ſufficient to counterballance all the Authorities I have brought, I think I may much better queſtion the Judgment of thoſe that gave that Opinion, ſince I can ſhew you that you yourſelf cannot allow it in all Points for Law: For in the firſt place, it is not there ſaid, that it was ſo judged by all the Lords and Judges who were appointed to hear the Cauſe there mentioned; but only *Fuit dit, que le Roy*, &c. By which it ſeems to have been the private Opinion only of ſome one or more of the Lords or Judges there preſent: For it is not ſaid, *fuit adjuge.* And if you will have it to have been the Opinion of them all, pray read what follows after: *Fuit dit quen temps le Roy* Henry, *& devant, le Roy fuit implede comme ſeroit autre homme de Peuple. Mes* Edward *Roy ſon fils ordeign que homme ſueroit vers Roy per Peticion; Mes unques Roys ne ſeront adjugez: Si non per eux meſmes & lour Juſtices.* So that if the former part of it be Law, the latter muſt be ſo too; and then it will directly contradict what you have quoted before out of *Bracton*: That in the time of *Henry* III. (in which he liv'd) there lay no Remedy againſt the King, but only by Petition: Whereas this Opinion makes him, before the time of *Edward* I. to have been liable to the ſame legal Proceſs with other Men. But notwithſtanding, this Paſſage in the *Year-Book* may very well bear a legal Interpretation, only by ſupplying what is indeed to be underſtood after the Words, *non pas les Peers, & le Commune*, [viz. *Sans aſſent du Roy*] which as it was then true, ſo I hope it will ever be ſo.

Chap. 21. But I think I can give you a much better Authority than this *Year-Book*, to prove where the Power of Making and Diſpenſing with Laws doth truly reſide, *viz.* The Solemn Declaration of the King, Lords and Commons, in the 25th of *H.* 8. (a Prince as jealous of his Prerogative as any of his Predeceſſors) where in the Preamble, read theſe Words: "It ſtandeth therefore with Natural Equity and "good Reaſon, that in all and every ſuch Humane Laws made within this "Realm, or induced into this Realm by the ſaid Sufferance, Conſents and Cuſ"tom, your Royal Majeſty, and your Lords Spiritual and Temporal, and Com"mons, repreſenting the whole State of your Realm, in this your High Court of "Parliament, have full Power and Authority not only to diſpenſe with thoſe,

"and

" and all other Humane Laws of this your Realm, as the Quality of the Perſons " and Matter ſhall require: Alſo the ſaid Laws, and every of them, to abrogate, " annul, amplify and diminiſh, as it ſhall ſeem to your Majeſty, and the Nobles " and Commons of your Realm, preſent in your Parliament, meet and conveni- " ent for the Wealth of your Realm, *&c.*" Whereby you may plainly ſee, that the Power of Making, Abrogating, and alſo Diſpenſing with Laws, is by this Act aſcribed jointly to the King, and the Two Houſes of Parliament; and not to the King alone.

But though I do not affirm, that they have a Co-ordinate Power with the King in making Laws, yet they have a Co-operative Power therein, as yourſelf have granted; for what is Co-operation, but a Power of working together? and how can three diſtinct Bodies work together, without each contribute their ſhare to produce the intended Effect?

M. Perhaps I may have been too unwary in my Expreſſion: But pray anſwer the Authorities I have brought from our ancient *Engliſh Saxon* Laws; wherein it ſeems plain to me, that the King had then the ſole Legiſlative Power.

F. I grant, he had a chief Share in the Legiſlative Power; but not the Sole Power, that is, He could make no Laws but in the Great Council, and by their Conſent: And this you might have ſeen as well as I, if you had not ſlily paſt by what made againſt you; and therefore, in the firſt place, to begin with your Inſtance of *Offa*'s giving that Boon to the *Roman* School, I think the Authority you bring for it is very ſlight: For though I own that *Matthew Paris*, who writes his Life, relates this Donation to have been made at *Rome*, without mentioning any Conſent or Confirmation of his Great Council: Yet this ſeems but an imperfect Account of the Matter; and according to the uſual Way of the Monkiſh Writers of thoſe Times, who are not ſo exact in ſuch Matters as they ſhould be: And therefore, though *Offa* did give, or vow theſe Pence at *Rome*; yet the Gift might receive its force from the Conſent of his Great Council, after he came home: Since all his Laws, and the Acts of his Councils are loſt, unleſs it be one, which Sir *H. Spelman* hath given us from ſuch Remains as have been ſaved out of the Libraries of ſeveral Monaſteries at their Diſſolution: And this contains no leſs than the Conſent and Confirmation of his Great Council aſſembled at *Calcuith*, *Anno* 940. for the Foundation and Endowment of the Abby of St. *Albans*, as alſo that of another Council at *Verulam*, for the conferring of divers other Lands of his own to that Monaſtery. Now I leave it to any indifferent Man to judge, whether that King who could not beſtow his own Demeſnes upon the Church, without the Conſent of the Common-Council of the Kingdom, could give away at once the 30th Penny of all his Subjects Eſtates for ever, without their Conſents: I am ſure the Donation of the ſame ſort of Pence by King *Edward the Confeſſor*, which is now to be found among the Laws of King *William* the Firſt, is ſaid to be granted *Communi Concilio Regni*, and that the *Saxon* Kings could not beſtow their Lands upon Religious Uſes. See Sir *H. Spelman*'s Councils, where *Baldred* King of *Kent* is an evident Example; who, though he had given the Manor of *Mallings* in *Suſſex* to *Chriſt-Church*, *Canterbury*; yet becauſe his *Principes*, or Great Men, that is, his Great Council conſented not thereto, it was revoked, until King *Egbert*, and his Son *Ethelwulf* did afterwards renew the ſaid Grant, with the Conſent of a Great Council held at *Kingſton*, *An.* 840. as you may ſee in the ſame Volume, laſt cited. And I am ſure after the Heptarchy, when our Kings were more powerful, the ſame King *Ethelwulf* could not by his meer Prerogative grant the Tythes of his Subjects Eſtates to the Clergy, without the Conſent of a Great Council of his Biſhops and principal Men, held at *Wincheſter*, *An. Gratiæ* 855. and intituled thus; *Celebris illa donatio* Ethelwulfi *Regis decimæ manſionis & omnium bonorum per terram ſuam Deo & Eccleſiæ facta confirmatur.*

Spel. Concil. Vol. 1. *p.* 340.

Ib. p. 340.

Vid. Vol. p. 348.

M. I grant, that perhaps theſe Kings could not diſpoſe of their own Lands, or the Eſtates of their Subjects, without the Conſent of their Great Council, any more than the Kings of *France* could formerly; yet I hope they were abſolute Monarchs for all that.

F. I beg your Pardon if I have been ſomewhat long in anſwering your Example of King *Offa*: But I will now ſhew you, that they could no more make Laws, than diſpoſe of their own, or their Subjects Eſtates, without their Conſent; and which you yourſelf might eaſily have ſeen, if you had pleaſed to have conſulted

Sir

Ibid. tom. 1. p. 219. Sir *Henry Spelman* as diligently as you have done Mr. *Lambard:* For there you might have found, that about the Year 712 King *Ina* aſſembled a Great Council or Parliament, wherein he made Eccleſiaſtical Laws concerning Marriages, *&c.* and did other things, *ad concordiam publicam promovendam per commune Conſilium, & Aſſenſum Epiſcoporum, Principum, Procerum, Comitum, & omnium Sapientum Seniorum, & Populorum totius Regni.* So likewiſe, if you will pleaſe to look into the *Decem-Scriptores*, you will find how *Athelſtan's* Laws were made by the Title of them, which runs thus: *Hæc ſunt judicia quæ Sapientes Exoniæ Conſilio Adelſtani Regis inſtituerunt, & iterum apud* Feureſham, *& tertia vice apud* Thundresfeldium, *ubi hoc definitum ſimul & confirmatum eſt.* So alſo King *Ethelred* held at *London* a Great Council, and made Laws, *Conſilio Juſſuque Regis Anglorum* Æthelredi, *Procerumque ſuorum de tota Anglia*, &c. Look alſo into the Title of King *Ethelred's* Laws in *Brompton's* Chronicle, where you will read theſe Words; *Hoc eſt* Concilium *quod Ethelredus Rex & Sapientes ſui condixerunt ad Emendationem & augmentum pacis omni populo apud Wodeſtocam in Mircena Landa, id eſt in terra Mircenorum*, &c. Where by *Concilium*, muſt be underſtood Law or Decree. To inſtance in one more out of the ſame Author ſtill, from the Title to another Set of Laws made by the ſame King: *Hæ ſunt Leges quas Ethelredus Rex & Sapientes ſui conſtituerunt apud Venetyngum ad Emendationem pacis & felicitatis Incrementum.* See likewiſe in *Monaſticon Anglicanum*, the 1ſt Volume, *Anno Dom.* 1024. *Canutus, Rex Angliæ cum Conſilio & Decreto Archiepiſcoporum, Epiſcoporum, & Primatum ſuorum expulit Clericos inhoneſte viventes ab Eccleſia Sancti* Edmundi, *& Monachos in illa conſtituit.* And the ſame King *Cnute* beſtowed divers Lands, and other Privileges, on the Monaſtery then call'd *Briadriceſworth* (afterwards St. *Edmundsbury*) *cum Conſilio, & Decreto Archiepiſcoporum, Epiſcoporum, Abbatum, Comitum aliorumque omnium Fidelium.* The like we find in a Charter of King *Edward the Confeſſor*; by which he granted divers Lands and Privileges to the Abby of *Weſtminſter*; *Cum Conſilio & Decreto Archiepiſcoporum, Epiſcoporum, Comitum aliorumque Optimatum.*

Vid. Chronic. Bromp. Col. 848. lin. 54.

Flor. Wigorn. A. D. 992.

Brompt. ut ſup. Col. 893, 894.

Ibid. Col. 895.

From all which it manifeſtly appears, that under the *Engliſh Saxon* Kings the Legiſlative, or Enacting Power, was in the Council of the *Sapientes* or Wites, conjunctly with the King; and that none of theſe *Saxon* Kings could paſs any Laws, or make any conſiderable Alteration in the State, without not only the Advice, but Conſent of their Great Council; which then conſiſted of their Biſhops, Great Lords, Principal Freeholders, and the Repreſentatives of Cities and Towns, as I ſhall prove another time, and was not left to the King, *ad libitum*, to call whom he pleaſed thereunto. And as the Word *Decretum* ſignifies *Decree* or *Order*; ſo likewiſe may the Word *Conſilium* here ſignify ſomething more than bare Advice, *viz. Agreement*, or *Appointment*; which if you pleaſe to peruſe any ordinary Dictionary, you may preſently ſatisfy yourſelf in.

But before I diſmiſs this Argument, I cannot but remark upon your Inſtance of King *Edmund's* making Laws alone, becauſe he there ſpeaks in the firſt Perſon plural; whereas if you will but conſult the *Proem* to thoſe Laws once again, you will, I doubt not, be ſatisfied of the contrary, for the Words are: *That having ask'd Advice of the Council or Aſſembly of Clergy and Laicks, that it ſeemed good to them* all, *as well as to the King, and therefore we thus ordain:* By which it appears, that the laſt Words, wherein the *Ordaining part* reſides, refer as well to the whole Aſſembly, as to the King.

Vid. Goldman's Dict.

M. The Government of our *Engliſh Saxon* Kings, is, I confeſs, very dark and obſcure; though, according to our ancient Hiſtorians, they ſeem to have been very abſolute; though when we come to look into the Laws themſelves, I confeſs they ſeem rather to have been limited Kings, than abſolute Monarchs; though whether that Limitation proceeded from the original Conſtitution of the Government, or their own free Conſent and Conceſſions, is a very great Queſtion; though I rather incline to the former, and ſhall give you my Reaſons for it when we come to diſcourſe on that Subject: But in the mean time, I muſt tell you in Reply to what you have ſaid, that if we conſider the Times not long after the Conqueſt, you will find the Supreme Legiſlative Power to have been then wholly in the King (as it is ſo ſtill) notwithſtanding ſome ambiguous Expreſſions to the contrary; or elſe our Kings would not be, what I think they really are, abſolute Monarchs. But to deſcend to Times leſs obſcure, it is certain, that when the *Norman* Conqueror firſt came in, as he won the Kingdom by the Sword, ſo did

H. S. B. D. p. 720, 721. & dein.

he

he govern it by his Sole Power: His Sword was then the Scepter, and his Will the Law: There was no need on his part of an Act of Parliament, much leſs of calling all the Eſtates together to know of them after what Form, and by what Laws they would be governed. It might as well be ſaid of him, as in the flouriſhing and beſt Times of the *Roman* Emperors; *Quod Principi placuit, legis habet Vigorem*, that whatſoever the King willed, did paſs for Law. This King, and ſome of his Succeſſors, being then Παμβασιλεῖς, and having a Deſpotical Power over the Lives and Fortunes of their Subjects, which they diſpoſed of for the Benefit of their Friends and Followers, *Normans*, *French* and *Flemmings*, as to them ſeem'd beſt. But as the Subjects found the Yoke to be too heavy and inſupportable; ſo they addreſſed themſelves in their Petitions to the Kings their Sovereigns, to have that Yoke made eaſier, and their Burden lighter, eſpecially in ſuch Particulars of which they were moſt ſenſible at the preſent time. By this means they obtain'd, firſt to have the Laws of *Edward the Confeſſor*; and by the ſame (that is to ſay, by pouring out their Prayers and Deſires unto them) did they obtain moſt of the Laws and Statutes which are now remaining of King *Henry* the Third and King *Edward* the Firſt. From whom, as alſo from *Henry* I. and King *John*, we may derive all thoſe Privileges we now enjoy; moſt of which, as they were iſſued at the firſt, either in form of Charters under the Great Seal, or elſe as Proclamations of Grace and Favour; ſo do they carry ſtill this Mark of their firſt procuring by theſe Expreſſions, *The King willeth, the King commandeth, the King ordaineth, the King provideth, the King grants*, &c. And when the Kings were pleaſed to call their Eſtates together, it was not out of an opinion that they could not part with their Power, or diſpenſe their Favours as they thought good, or abate any thing of the Severity of their former Government without the Approbation and Conſent of their People; but out of a juſt Fear, leſt any one of the Three Eſtates (I mean the Clergy, Nobility, and the Commons) ſhould inſiſt on any thing which might be prejudicial to the other two. The Commons being always on the craving Part, and ſuffering as much perhaps from their immediate Lords, as from their King, might poſſibly have asked ſome things which were as much derogatory to the Lords, (under whom they held) as of their Sovereign Liege the King, the chief Lord of all. In this reſpect the Council and Conſent, as well of the Prelates as the Temporal Lords, was accounted neceſſary in paſſing of all Acts of Grace and Favour to the People: Becauſe that having many Royalties, and large Immunities of their own, with a more near relation to the Perſon, and a greater Intereſt in the Honour of their Lord the King; nothing ſhould paſs unto the Prejudice and Diminution of their own Eſtates, or the Diſabling of the King to ſupport his Sovereignty.

F. I confeſs you have given a plauſible Account concerning the Government of *William* I. whom you call the *Conqueror*: Whereas if it be more exactly look'd into, it will be found that he had no more Power of making Laws without the Conſent of his Great Council, than any of his Predeceſſors; neither had he any ſuch Deſpotical Power as you imagine, over the Lives and Fortunes of all his Subjects; for whether we conſider them as *Normans*, *French* or *Flemmings*, or whether as *Engliſh*, it will be all one: For if, as Dr. *Brady* ſuppoſes, theſe latter were quite turned out of their Eſtates, and that they were by him wholly given to the former; then theſe *French* and *Normans*, being Conquerors together with him, would never have ſubmitted to any other Government than what they enjoyed in their own Countries, each of which was then governed by Kings or Dukes, together with a Great Council, or Aſſembly of the Eſtates: And we find, that when ſucceeding Kings would have oppreſſed and tyrannized over their Heirs and Deſcendants, they, together with the old *Engliſh*, took up Arms, and defended their Liberties, and never laid them down until they had obtained their juſt Rights and Liberties contain'd in the Great Charters of King *John*, and *Henry* the Third. And which (as *Matth. Paris* himſelf tells us in the Reign of King *John*) *contained for the greateſt part the ancient Laws and Cuſtoms of the Kingdom*: And therefore by the Statute, called *Confirmatio Chartarum*, 25 *Edw.* I. it is adjudged in full Parliament, *That the Great Charter, and Charter of the Foreſt, ſhall be taken as Common Law.* So that they were not any new Grants, but rather Confirmations of their ancient Rights and Liberties, as my Lord *Coke* very well obſerves in his excellent Preface to his 2d *Inſtitutes*; where he tells us, *That* Magna Charta *is for the moſt part declaratory* *Anno* 1215.

claratory of the principal Grounds of the Fundamental Laws of England; *and for the Reſidue, is Additional to ſupply ſome Defects of the Common Law*: With whom likewiſe agrees one of his learned Succeſſors, the late Earl of *Clarendon*, in his Survey of the *Leviathan*, when he tells us, *That thoſe Laws and Cuſtoms which were before the Conqueſt, are the ſame which this Nation or Kingdom have been ever ſince governed by to this Day.*

Chap. 24. *p.* 110.

And as for the Laws of *Edward the Confeſſor*, though it is true, that *William the Conqueror* regranted and confirmed them; yet was it no more than what he was oblig'd in Conſcience and Honour to perform and obſerve, ſince he was admitted to the Crown by the general Conſent of the Clergy, Nobility and People; and at his Coronation (as well as afterward) ſwore to obſerve the Laws of King *Edward*: And by the way, though theſe Laws are called the Laws of King *Edward*, yet *William* of *Malmsbury* long ſince obſerv'd, *That they were called his Laws, Non quas tulit, ſed quas obſervaverit*; that is, he had only collected them into one body, and ratified them with the Aſſent of his Great Council. And that theſe Laws were more than once ſworn to, and confirmed by King *William* himſelf, appears by the Story of *Frederick* Abbat of St. *Albans*, who frighted him into a Confirmation of them by Oath, for fear of a general Inſurrection of the People; So that if he, or his Son *Rufus*, made any Breaches upon their Liberties, they were, *ex poſtliminio*, reſtored to them by the *Magna Charta's* of *Henry* I. King *Stephen*, King *Henry* II. King *John*, and King *Henry* the Third. And thoſe Oppreſſions, contrary thereunto, are branded by all Hiſtorians as notorious Perjuries and Wrongs to the Subjects.

But that King *William* the Firſt altered nothing material in the Fundamental Conſtitutions of the Government, whatever he might do in ſome leſs material Cuſtoms or Laws, which he brought with him out of his own Country, appears plainly by this, which you cannot deny, that he often aſſembled his Great Council, (as his *Engliſh* Predeceſſors had done) and that in them were diſpatched all the great Cauſes and Complaints of the Kingdom. And for this, I will give you the Teſtimony of two very ancient Hiſtorians: The firſt is *Radolphus de Diceto*, who in *Anno* 1071, tells us, *That the Plaint of* Wulſtan *Biſhop of* Worceſter, *was heard and ended in* Conſilio *celebrato in loco qui vocatur* Pedreda, *coram Rege, & Doroberniæ Archiepiſcopo, & Primatibus totius Regni.* The next is *Gervaſius Dorobernenſis*, who thus relates it of *Lanfranc* Archbiſhop of *Canterbury*; *Eligentibus eum Senioribus ejuſdem Eccleſiæ, & Epiſcopis, ac Principibus, Clero, & Populo Angliæ, in Curia Regis, in Aſſumptione Sanctæ Mariæ.* Here the *Epiſcopi & Principes, Biſhops and Princes*, the *Cleri & Populus*, the *Clergy* and *People*, or *Laity*, were the ſame Perſons, and only expreſſive of one another, and all had Votes in this Election.

Hiſt. Ang. Script. X. Col. 483.

Ib. Col. 1653.

M. I pray give me leave to interrupt you a little: I will not deny but that the Conqueror did often aſſemble Great Councils of his Biſhops, and Great Lords, commonly called in Hiſtorians, *Principes* or *Primates*; yet I think I may boldly affirm, that there were no *Engliſhmen* in thoſe Councils, or that they made any Laws for the Benefit of *Engliſhmen*, who were kept under by thoſe *Normans*, who then enjoyed their Eſtates; much leſs was there any ſuch thing as Commons either by themſelves, or their Repreſentatives in thoſe Aſſemblies, which then conſiſted wholly of the King's Feudal Tenants *in Capite*, and of no other, as Dr. *B.* hath very plainly ſhewn us: And when King *William* made Laws, it is much to be doubted whether he made them ſo much as with the Conſent of his Great Council, or not; for the Title to the *French* and *Latin* Copies of his Laws, runs thus, put into *Engliſh*, *Theſe are the Laws and Cuſtoms which* William *the King granted to all his People of* England *after the Conqueſt, or Subduing of the Land: They are the ſame which* Edward *the King, his Kinſman, before him obſerved.* In this Preface we have only to note, that the Laws are expreſly ſaid to be the King's Grant, and the Supplemental Laws writ in the *Red Book* of the *Exchequer*, are by way of Charter, or Grant, thus; *Wilhelmus Rex Anglorum*, &c. *Omnibus hominibus ſuis Francis, & Anglis, ſalutem*; and all along the Authoritative Parts are expreſſed by *Statuimus, volumus, interdicimus, prohibemus, præcipimus.* So that by theſe Expreſſions in his Laws, the abſolute Sovereignty of the Conqueror in the point of Law-giving is manifeſt. I ſhall content myſelf with a very few Authorities, becauſe the matter is ſo plain; *Ordericus Vitalis* ſaith thus, *Eamque* (i. e. *England*) *Gulielmus Rex ſuis Legibus commode*

B. A. P.

J. E. M. G. p. 206.

Fol. 853.

modò subegit. And *Eadmer*, Contemporary with the Conqueror, in his Hiſtory, thus; *Uſus atque leges, quas patres ſui, & ipſe in Normannia ſolebant, in Anglia ſcribere volens: Cuncta divina, ſimul & humana ejus nutum expectabant.* From whence you may ſee, that all Matters, as well Spiritual as Temporal, depended upon his ſole Will. *Fol. 6.*

And though we have no particular Account of what Laws his Son *William Rufus* made, yet we may preſume, according to the Teſtimony of Hiſtorians, that he was altogether as abſolute in thoſe Councils he call'd, as his Father, as may be ſeen in *Eadmerus* his Account of his Tranſactions with Archbiſhop *Anſelm.* So that it is certain he governed by his own abſolute Authority, raiſing what Money he pleas'd upon his Subjects. 'Tis true, that in the Reign of his Succeſſor *Henry* the Firſt, the People found ſome little Relaxation, by reaſon of the Charter he made them, containing ſeveral Mitigations of the Severity of the Feudal Laws, as alſo thoſe of *Foreſts*; yet even theſe are ſaid to be made by his own ſingle Grant and Authority, though I confeſs it was granted in a Great Council. So likewiſe in *Florence* of *Worceſter*, we find that in 28 of *Henry* I. *That King confirmed the Acts of a Synod, or Council of the Clergy of the Province of* Canterbury, *and gave his Royal Aſſent to them.* *Eadmer. Hiſt. Novel. l. 1.* *Pag. 503.*

As for King *Stephen*, though he was a notorious Uſurper, and ſet up and crown'd by a Faction of Biſhops, and ſome few Temporal Lords; and that not long after his Coronation, he in a Great Council at *Oxford* granted to all his Subjects another Charter of divers Privileges, and Freedoms from the former Exactions: Yet the Words of the Charter are in his own Name, and by his own Authority ſolely, as appears by theſe Words; *Obſervari præcipio, & conſtituo.* But *Richard*, Prior of *Hexham* alias *Hagulſtad*, in his Chronicle, cloſes his Charter thus; *Hæc omnia concedo, & confirmo ſalva Regia, & juſta Dignitate mea.* From which Words it is plain, that he never meant to part with any of the juſt and neceſſary Prerogatives of his Crown. *J. E. M. G. Pag. 215.* *Vid. X. Scrip. Col. 314. Anno 1136.*

So likewiſe King *Henry* the Second, in a Great or General Council held at *London*, confirmed the Great Charter granted by King *Henry* the Firſt, his Grandfather; but this Charter alſo runs wholly in the King's own Name, without any mention of its being aſſented to either by the Biſhops or Nobles: And as for the Conſtitutions made at the Great Council of *Clarendon*, though that King made the Archbiſhops, Biſhops, with all the Clergy, as alſo the Earls, Barons and Nobility, all ſwear to obſerve them; yet the enacting Part proceeded only from the King, as appears by their very Title thus, *Aſſiſſæ Henrici Regis factæ apud Clarendon*, &c. And *Mat. Paris* concludes theſe Conſtitutions with, *Decrevit enim Rex.* From whence it appears, that it was the King alone that decreed and conſtituted thoſe Laws. *Vid. Spel. Concil. tom. 2. fol. 54.*

I ſhall not ſay much of the Great Councils in *Richard* the Firſt's Time, ſince he did not reign long enough to call many, but in that held at *Nottingham*, we find that the King diſſeized *Gerard de Canville* and others; and that the King appointed to be given him two Shillings on every Carucate of Land throughout *England*, &c. From whence I ſhall obſerve that the Words *Rex præcepit, conſtituit*, &c. as they are in this Hiſtorian, ſhew, that the King then had ſolely the authoritative Power of paſſing all Conſultations of theſe Councils into binding Laws, even where Money was to be levied on the Subjects, and that ſeizure was to be made of their Eſtates. But to come to the more troubleſome and perplex'd Reign of King *John*, in which there were many Great Councils holden, yet I ſhall inſtance but in ſome few of them mention'd in *Mat. Paris*, as that of St. *Albans*, held by *Jeffery Fitz-peter* and the Biſhop of *Wincheſter*, in this King's Abſence, where *ex parte Regis* it was firmly enjoyn'd, under penalty of Life and Limb, that the Laws of King *Henry*, his Grandfather, ſhould be kept by all in his Kingdom. From whence we may obſerve, that the Laws had their Force only from the King's Authority, as appears by this Expreſſion, *ex parte Regis firmiter eſt præceptum.* And when afterwards at *Runningmead* he was compelled to ſign the firſt *Magna Charta*, I own it was done in a Great Council of Biſhops, Earls and Barons, as well thoſe who ſtood for him as againſt him: Yet that it proceeded wholly from his own good Will, is plain from the *Charta de Foreſta* of this King, as appears by theſe Words, *Ad emendationem Regni noſtri, ſpontanea, & bona voluntate noſtra dedimus, conceſſimus pro nobis, & hæredibus noſtris, has libertates ſubſcriptas.* From all which Charters of Liberties we *In R. Hovedon, p. 419.* *Fol. 201.* *J. E. M. G. p. 211.*

may conclude, that the Petitions of the People were drawn into the Form of a Charter, and paſſed under the King's Seal as his meer voluntary free Grants and Conceſſions, without their Votes, Suffrages and Authority. And ſometimes ſuch Rights of Liberties have been beſtowed and declared by our Kings, by way of Anſwer to the Petitions of the Lords and Commons; and that this Cuſtom is not yet diſcontinued, appears by the Anſwer of King *Charles* the Firſt to the *Petition of Right*, when no other Anſwer would pleaſe the Commons but the King's expreſs Aſſent to their Petition, in theſe Words, *Soit Droict faict comme eſt deſire.* But to return to the Reign of King *Henry* the Third.

F. I beſeech you, Sir, give me leave now to anſwer what you have already alledged out of our Hiſtorians for the Supreme and Abſolute Power of our Kings, before we proceed further to leſs obſcure Times. And therefore I muſt tell you, that you have in this long Speech of yours made uſe of all the Artifice of an Advocate for a Party, *viz.* in urging all that can any way make for you, and ſlily paſſing over whatſoever may make againſt you. And to begin with your Story of King *William* the Firſt, I ſhall not now diſpute whether there were any *Engliſhmen* in thoſe Great Councils, or whether they conſiſted only of Tenants in Capite, ſince I ſhall defer that Queſtion till anon. But as for the *Engliſh* you have put upon the *French* Title of the Laws of this King, it is not fairly rendered; for in the *French* it is, *Apres le Conqueſt de la terre*, which doth not always ſignifie a *ſubduing by Force*, but by any other ways of Acquiſition different from that of Hereditary Succeſſion; which *Matt. Paris* was long ſince aware of, when, writing of this King, he ſays, *Rex Angliæ ex Conqueſtu dicitur, tamen quod beatus Edvardus, eo quod hærede caruit, Regnum legavit Willielmo Baſtardo Duci Normannorum.* With whom Sir *Henry Spellman*, in his Gloſſary, agrees, *Willielmus primus Conqueſtor dicitur, quia Angliam conquiſivit*, i. e. *acquiſivit, purchaſed, non quod ſubegit.* And the learned Sir *John Skene*, in his Book *de verborum ſignificatione*, writes thus, *Conqueſtus ſignifyes Lands quhilk ony Perſon acquiris and poſſeſſis, privato Jure, vel ſingulari titulo, vel donatione, vel ſingulari aliquo contractu.* And therefore I very much doubt, whether or no the *Latin* Verſion of theſe Words, *Apres le Conqueſt de la terre, poſt ſubactam terram*, be as antient as the *French* Original, and be not rather the Verſion of ſome Clerk or Monk who lived long after.

Matt. Paris. p. 941.

Sir H. Spell. Gloſſ. Tit. Conqueſtus.

Pag. 39. Tit. Conqueſt.

But whether theſe Laws were not intended as well for the benefit of the *Engliſh* as *Norman* Subjects, I appeal to this Title itſelf, tho' you have omitted part of it, *Hæ ſunt Leges & Conſuetudines quas Gulielmus Rex conceſſit Univerſo Populo Angliæ poſt ſubactam terram.* So that unleſs the *Engliſh* were none of the People of *England*, theſe Laws were as well intended for the one as the other: And I appeal to that Charter of King *William* you have now quoted, whether or no it doth not begin, *Omnibus hominibus ſuis Francis & Anglis*; by which Words certainly the *Engliſh*, as well as *Normans*, had an intereſt in thoſe Laws and Privileges therein granted. I mention this only by the by, in anſwer to what you have ſaid.

V. Leges Guil. I. Edit. ad finem Lambardi Archaionom. per Rog. Twiſden.

But to return to what I am chiefly concerned to ſpeak of, the King's ſole Legiſlative Power. In the firſt place, I ſhall not deny, but as this Kingdom is a limited Monarchy, ſo it is ſuitable to the Honour and Dignity of the Monarch, that all Laws and Conſtitutions ſhould run in his Name, and are often ſaid to be made by him, tho' in a Political or Legal Senſe, they could not be made without the Advice and Conſent of his Great Council or Parliament. And that this was the Cuſtom in the Time of *William* the Firſt, as of all others his Succeſſors, I need quote only the 55th Law of this King, in theſe Words, *Prout Statutum eſt eis (ſcil. Liberis hominibus) & illis a nobis datum & conceſſum jure hæreditario in perpetuum, per* Commune Concilium *totius Regni noſtri prædicti.* From whence you may obſerve, that this King could not then make Laws without the Conſent of the Common Council of his whole Kingdom: And tho' he might do many arbitrary and illegal Things to the prejudice of the old *Engliſh* Liberties, yet this was no more his Right, nor any more to be quoted as a Precedent, than his ſeizing upon the Biſhops and Abbots Lands, and violently taking away the Plate out of Churches and Monaſteries (as Hiſtorians tell us he did) could give him a Right to them.

Ibid. p. 170.

I have not much to obſerve upon the Reign of *William Rufus*, ſince we have none of his Laws left us, if ever he made any. But thus much we plainly find from the Hiſtorians, and eſpecially *Eadmerus*, that he called divers Great Councils of all the Nobility of the Kingdom; eſpecially about his difference with *Anſelm*, whom,

whom, it is plain, he could not condemn without the Conſent of this Great Council. But to come to the Reign of King *Henry* the Firſt, it appears plainly by *W. Malmsbury* and *Matt. Paris*, that he was elected and crowned King by the common Suffrages and Favour of the Clergy and People; and certainly that Council, whoſe Votes could make a King, was alſo neceſſary to all ſuch Laws as he was to make: And you yourſelf have granted, that this Charter of his was made in a Great Council; and it appears in *Matt. Paris*, as alſo in the Laws of this King, publiſhed by Mr. *Lambard*, *That the Archbiſhops, Biſhops, Barons, Earls, Viſcounts, or Sheriffs, Optimates & totius Regni Angliæ*, were Witneſſes to this Charter. And I can tell you of a very antient Charter of King *John*, which recites that thoſe Laws were made *de Communi Conſilio, & Aſſenſu Baronum Regni Angliæ*. It being uſual in ſucceeding Ages, at the Coronations of our *Engliſh* Kings, to confirm, make and ordain Laws, *de Aſſenſu Baronum Regni, vel per Commune Concilium Regni, i. e.* the Parliament, as it was afterwards called.

P. P. R. C. p. 62.

Charta moderationis feodi Magni Sigilli. Ann. 1. Johan. in Archivis Archiepiſcopi. Cant. Lamb.

As for *Henry* the Second's Reign, it is apparent by the Laws of this King, in *Spellman*'s Councils, that he granted his Charter in a Great or General Council, and conſequently they muſt likewiſe give their Aſſents to it, as well as to that of his Grandfather *Henry* the Firſt. And tho' in the Conſtitutions of *Clarendon*, the King alone is ſaid to have made or decreed them; yet nothing is plainer than that the King could not make them without the Advice and Conſent of his Great Council; or elſe to what purpoſe were they to be called? and if their Aſſent was neceſſary, certainly they had alſo a hand in making thoſe Conſtitutions.

But that the King could not condemn any Peer or Great Man of the Kingdom in thoſe Days, without a legal Tryal in the Great Council of the Kingdom, I need go no further than a Council ſummoned by *Hubert* Archbiſhop of *Canterbury*, as King *Richard*'s Juſticiary in his Abſence; where *Roger Hoveden* tells us, that having ſhewed the Letters of Earl *John* to the Biſhops, Earls and Barons, *per Commune Concilium Regni definitum eſt, quod Comes Johannes diſſaiſietur*; which interprets that Paſſage you have quoted out of the ſame Author, that the King, in a Great Council, diſeized *Gerard Canville* and others; that is, by the Authority and Sentence of the ſaid Council. And ſo likewiſe in the ſame Senſe is to be underſtood thoſe Words you mentioned, *The King appointed to be given him, conſtituit ſibi dari*, two Shillings on every Plough-land; that is, he deſired it to be given him by them: For if he could have taken it without their Conſent, to what purpoſe did he propoſe it in that Council? if he could have abſolutely demanded it, why ſhould he only requeſt or deſire it of them?

So likewiſe for the Great Council in King *John*'s Time, nothing is more plain than that they were Parties to all the Laws that were made in his Time; and that even the Great Charter was a Statute to which their Aſſent was likewiſe neceſſary, I ſhall ſhew you by and by, when I come to ſpeak of the Great Charter of King *Henry* the Third, and the ſeveral Confirmations of it by his Succeſſors. But if either *William Rufus*, King *John*, or any other King, ever levied any Taxes upon the People, without Conſent of the Great Council or Parliament, it was contrary to our ancient Laws and the Liberties of the Subjects, and particularly to the 55th Law of *William* the Firſt (part of which I have already cited) It begins thus; *Volumus etiam ac firmiter præcipimus & concedimus, ut omnes liberi homines totius Monarchiæ Regni noſtri prædicti habeant, & teneant terras ſuas, & poſſeſſiones ſuas, bene & in pace libere ab omni exactione injuſta, & ab omni Tallagio; ita quod nihil ab eis exigatur, vel capiatur, niſi Servitium ſuum liberum, quod de jure nobis facere debent, & facere tenentur, & prout ſtatutum eſt eis*, &c. So that whatſoever was done at any time contrary to this Statute was illegal, and conſequently ought not to be quoted as any part of the King's Prerogative.

But that the Nobility and People of *England* had divers Rights and Liberties before the Time of King *John*, and of his granting that Charter, appears by its Concluſion in theſe Words; *Salvis Archiepiſcopis, Abbatibus, Prioribus, Templariis, Hoſpitalariis, Comitibus, Baronibus, Militibus, & omnibus aliis tam Eccleſiaſticis, Perſonis quam ſecularibus libertatibus, quas prius habuerunt.* And as for the reſt of the Liberties granted by this Charter, tho' they are ſaid to have been granted from the King's meer good Will, yet that is recited only to make it more ſtrong againſt himſelf, ſince the Nobility and People of *England* claimed thoſe Liberties as their ancient undoubted Right. And the ſame Author (as I have already hinted)

In Matt. Paris *in vita* R. Johannis, *p.* 259. 30.

Idem 254.

expreſly tells us, that this Charter contained *Maxima ex parte leges antiquas.*——— And a little lower he relates where thoſe Liberties were to be found, *Capitula quoque legum & libertatum quæ ibi Magnates confirmari quærebant partim in Charta Regis Henrici ſuperius ſcripta ſunt, partimque ex Legibus Regis* Edwardi *antiquis excerpta.* So that they were not only the effect of the King's meer Grace and Favour, as you ſuppoſe. But if you pleaſe now to deſcend to the Reign of *Henry* the Third, and ſo downward, from which Time our eldeſt printed Statutes bare Date, let us ſee if I cannot anſwer all thoſe Arguments which the Gentlemen of your Opinion have thence brought for the King's ſole legiſlative Power.

M. Tho' I do not allow of your Notion of the Conqueror's not being properly and really ſo, as I ſhall ſhew you another Time, when I ſhall more particularly conſider that Argument of the Right of Conqueſt in King *William* and all his Succeſſors; therefore I do at preſent readily aſſent to your Propoſal, and it was the very thing I was coming to: And therefore I ſhall begin with the *Magna Charta* of *Henry* the Third, which begins thus, *Know ye, that we of our meer and free Will have given theſe Liberties.* The Statute *de Scaccario, anno* 51 *Hen.* 3. begins thus; *The King commandeth that all manner of Bayliffs,* &c. The Statute *de Diſtrictione Scaccarii* made the ſame Year, runs thus; *It is provided and ordained. The King willeth.* The Statute of *Malbridge* 52 *Hen.* 3. *And he,* i. e. *the King, hath appointed all theſe Acts, Ordinances and Statutes to be obſerved of all his Subjects.* If we come to the Reign of his Son *Edward* the Firſt, and begin with the Statute of *Weſtminſter,* 1. it is there ſaid in the Preamble, *Theſe are the Acts of King* Edward *the Firſt, made at his firſt Parliament by his Council, and by the Aſſent of the Archbiſhops, Biſhops,* &c. And in the firſt Chapter 'tis ſaid, *The King hath ordained and eſtabliſhed theſe Acts.* And tho' I grant that in divers Statutes of this King, as in this of *Weſtminſter,* it is recited that the King, by the Advice of his Council, or Aſſent of the Archbiſhops, Biſhops, Earls, Barons, *&c.* have made, provided, ordained or eſtabliſhed ſuch and ſuch Laws; yet it is plain, that the enacting or decreeing part is wholly aſcribed to the King, in all thoſe Statutes wherein ſuch Words are found, as I ſhall make it appear more plainly by the Statute of *Acton Burnel,* made in 13 *Edw.* I. where it is ſaid, *The King by himſelf, and all his Council hath ordained and eſtabliſhed.* And in the Statute of *Weſtminſter* 3. 18 Edw. I. chap. 1. *Our Lord the King, in his Parliament at* Weſtminſter, *at the Inſtance of the great Men of the Realm, hath granted, provided and ordained.* In the Statute *De iis qui ponendi ſunt in Aſſizes,* 21 Edw. I. *Our Lord the King in his Parliament holden,* &c. *hath ordained, that,* &c. The Statute of *Quo Warranto* 18 Edw. I. runs thus; *Our Lord the King, at his Parliament holden at* Weſtminſter, *of his ſpecial Grace, and for the Affection he beareth unto his Prelates, Earls and Barons, hath granted, that,* &c. 1 Edw. II. begins thus; *Our Lord the King hath granted.* The Statute of *Gavelet,* 10 Edw. II. begins thus; *It is provided by our Lord the King, and his Juſtices.* The Statute of *Carliſle,* 15 Edw. II. begins thus; *The King unto the Juſtices of his Bench ſendeth greeting. Whereas of late we have ordained,* &c.

But if we come to the Reign of his Son *Edward* the Third, the Prefaces to moſt of the Statutes made in his Reign run thus; *Our Lord the King, by the Aſſent of the Prelates, Earls,* &c. *and at the Requeſt of his People, hath granted and eſtabliſhed; or elſe at the Requeſt of the Commonalty, hath ordained,* &c. The like Stile continued during the Reigns of *Richard* the Second, *Henry* the Fourth and *Henry* the Fifth, with very little Alteration only it ran thus commonly; *At the Requeſt of the Prelates, Dukes, Earls and Barons, and at the Inſtance and ſpecial Requeſt of the Commons, the King hath ordained,* &c. Whereby we ſee a plain difference in the Phraſes of the Statutes of thoſe Times; for it is the Lords that give their Aſſent, whereas the Commons only Petitioned; but it is the King alone who ordains and eſtabliſhes. I confeſs indeed, that under ſome Princes of bad Titles, as in particular, under the Minority of *Henry* the Sixth, there began ſome Alteration in the form of penning the enacting part of moſt Statutes that were then made, and that unto thoſe uſual Words, which were inſerted ordinarily into the Body of the Acts, from the beginning of the Reign of that King, *viz. by the Advice and Aſſent of the Lords Spiritual and Temporal, and at the ſpecial Inſtance and Requeſt of the Commons,* there was added, *by the Authority of the ſaid Parliament.* But it is ſtill to be obſerved, that tho' theſe Words were added to the former Clauſe, yet the Power of granting and ordaining was ſtill acknowledged to belong to the King alone, as appears by theſe

H. S. B. R. p. 721.

Acts

Acts of Parliament of that King, *viz.* 3 *Hen.* VI. *ch.* 2. 8 *Hen.* VI. *ch.* 3. Where it is ſaid, *Our Lord the King, by the Advice and Aſſent, and at the Requeſt aforeſaid, hath ordained and granted, or ordained and eſtabliſhed by the Authority of this Parliament.* And thus it generally ſtood (tho' a general Rule may have ſome Exceptions) till the beginning of the Reign of *Henry* the Seventh, about which time, that uſual Clauſe *at the ſpecial Inſtance or Requeſt of the Commons*, began by little and little to be laid aſide, and that *of their Advice or Aſſent*, to be inſerted in the place thereof: For which I do refer you to the Statute Book at large; which Form, I confeſs, continues to this Day; yet even in *Henry* the Seventh's Time, in the firſt of that King and the ſeventh Chapter it runs in this Stile, *The King our Sovereign Lord, of his noble and abundant Grace, by the Advice and Aſſent of the Lords Spiritual and Temporal, at the Supplication of the Commons in the ſaid Parliament aſſembled, and by Authority of the ſame, ordaineth.* And tho' the Statutes of *Henry* the Eighth do generally agree in their Stile with thoſe of his Father; yet in his Time alſo many Acts were drawn up in Form of Petitions; as 3 *Hen.* VIII. *ch.* 14. *Praying your Highneſs, the Commons in this preſent Parliament aſſembled.* And 5 *Hen.* VIII. *ch.* 4. *Praying the Commons in this preſent Parliament.* And in the Reign of his Son *Edward* the Sixth, tho' I grant that moſt of his Acts do run in the uſual Form; yet this one is very remarkable, 1 *Edw.* VI. *ch.* 4. *Wherefore the King our Sovereign Lord, &c. at the humble Petition and Suit of the Lords and Commons in this preſent Parliament aſſembled, doth Declare, Ordain and Enact, by the Aſſent of the Lords Spiritual and Temporal, and the Commons in this preſent Parliament aſſembled, and by the Authority of the ſame*: which laſt Words, tho' they may ſeem to refer to the Parliament, and may make Men think that the Lords and Commons did then pretend ſome Title unto the Power of making Laws: Yet neither Adviſing nor Aſſenting are ſo operative in the preſent Caſe, as to transferthe Power of making Laws to ſuch as do adviſe about them, or aſſent unto them. Nor can the Alteration of the Forms and Stiles uſed in antient Times import an Alteration of the Form of Government, unleſs it can be ſhewed (as I think it cannot) that any of our Kings did renounce that Power which properly and ſolely did belong unto them, or did by any ſolemn Act of Communication confer the ſame upon the Lords and Commons convened in Parliament: And therefore upon the whole Matter, ſince in almoſt all our moſt antient Statutes, it is preciſely expreſs'd that they were made by the King himſelf; the meaning of thoſe general Words uſed in latter Times, that the Statutes are made by Authority of Parliament, are particularly explained in former Statutes, *viz.* That the King Ordaineth, the Lords Adviſe, the Commons Conſent, as by comparing the Writs with the Statutes that expound the Writs will evidently appear.

H. S. B. D. p. 722.

F. F. G. J. p. 41.

F. In anſwer to thoſe Authorities you have now brought, I doubt not but I ſhall give you others of as great weight, that prove the direct contrary to what you now aſſert. To begin with your Inſtance of *Magna Charta*, I ſhall ſhew that thoſe Charters that were granted and confirmed by *Henry* the Third, were not his Acts or Grants alone, but the Acts alſo of the whole Kingdom repreſented in Parliament. We have two expreſs Declarations for the one, in the 25th of King *Edward* the Firſt; where is to be found in the Parliament Roll of that Year, a Confirmation of the great Charter of Liberties and Foreſts, in theſe Words, which I ſhall render to you in *Engliſh*, out of the old *French*, for your better underſtanding. *Know ye, that the Honour of God and Holy Church, and for the profit of our whole Realm; We have granted for us and to our Heirs, that the Great Charter of Franchiſes and Foreſts, which were made by the common Aſſent of the whole Realm, in the Time of King* Henry *our Father, ſhould be held in all Points without any Blemiſhment.* So likewiſe we find another Confirmation of thoſe Charters in the Parliament Rolls of the 15th Year of *Edward* the Third, which being in old *French* I ſhall render it into *Engliſh*. Imprimis, *It is accorded and aſſented, that the Franchiſe of Holy Church and the Great Charter of Foreſt, and the other Statutes made by our ſaid Lord the King, and his Progenitors the Peers and the Commons of the Land, for the common profit of the People, ſhall be firmly kept and maintained in all Points.* So that you may hence plainly ſee, that the King himſelf, with the whole Parliament, declare, and that in two ſeveral Kings Reigns, that the Great Charters were not only the free Grants of King *Henry*, but alſo the joint Acts of the Common Council of the whole Kingdom; and why King *John*'s Charter ſhould not be made by the like Authority, being one of his Progenitors, I ſee no reaſon, eſpecially if we conſider that that Charter was firſt

Mem. 38.

N. 50. *Dorſo.*

drawn

drawn up by the Barons in the Form in which we find it, and was paſſed by that King, under his Great Seal, in that vaſt General Council or Aſſembly at *Runningmead*. And certainly, whoever can draw up a Law, and can offer it to a Prince to confirm, and without whoſe Conſent and Acceptance it would not be good, muſt needs have a ſhare in the making of it.

As for your other Inſtances of thoſe old Statutes made in the Reign of *Henry* the Third, though I grant they begin, as you ſay, in the King's Name: Yet if you would but have read a little further, you would have found that in divers of them the Biſhops, Earls and Barons gave their Conſents to them: And for the Proof of this I ſhall begin with one of the antienteſt Statutes we have left us, *viz.* that of *Merton*, in the Preamble of which it is recited, *Proviſum eſt in Curia Domini Regis apud Merton*, where after the Parties that were preſent at the making of the Laws it concludes thus in the *Latin* Copies, *ita proviſum eſt & conceſſum tam a prædictis Archiepiſcopis, Epiſcopis, Comitibus, Baronibus, quam ab ipſo Rege, & aliis*; where you ſee the providing and enacting part is aſcribed to the Biſhops, Earls and Barons, as well as to the King, who is here mentioned almoſt laſt of all. And tho' I confeſs that there was then no ſet Form of penning of Statutes in that honeſt and plain Age, when Parliaments did not laſt ſo many Days as they do now Weeks; and that the King's Judges and Council drew up the Acts, after the Parliament was up, in what Form they pleaſed, ſometimes leaving out any mention of the Biſhops, ſometimes of the Temporal Lords, and moſt commonly of the Commons; yet that they did all give their Conſents to ſuch Acts, appears by the Statute of *Weſtminſter* 1. which you have already cited, where the Aſſent of the Archbiſhops, Biſhops, *&c.* Counts, Earls, Barons, and all the Commonalty of the Land, is expreſly mentioned. So likewiſe the Statute of the 51ſt Year of King *Henry* the Third, concerning Meaſures, begins thus; *Per ordinationes totius Regni Angliæ fuit menſura Domini Regis compoſita.*

20 *H.* 3.

But farther to convince you, that in the Opinion of the Lord Chancellor, and thoſe learned Judges who framed the Writs that were iſſued out upon any of theſe antient Statutes, you will find that they who lived in thoſe very Times, believed thoſe Statutes were made not by the King alone, but by him and the Common Council of the Kingdom; which Writs, as you may ſee in the Regiſter of Writs, runs thus; *Rex Vicecom, &c. Salut. Si A fecerit, &c. tunc ſummonias, &c. B. quod ſit coram Juſticiarijs, &c. Oſtenſuru quare, cum de Communi Concilio Regni Noſtri Angliæ proviſum ſit, &c.* as you may ſee in the Writs granted upon the Statutes of *Magna Charta, Marlbridge, Merton, Gloceſter*, &c. which have all of them this or the like Recitals, *cum de Statuto, or juxta formam Statuti, de Coummuni Concilio Regni noſtri Ang. inde proviſi.* The like Inſtances I could give you upon the Statute of *Marlbridge*, and divers other old Statutes, in which the King, by the Statute itſelf, ſeems only to have enacted it; and yet you may ſee that our Sages of the Law were very well convinced that thoſe Statutes were made not by the King alone, but by the whole Common Council of *England*: So that there is no avoiding the Concluſion, that the Great Council, or Parliament, had then a great Share in the Legiſlative Power; unleſs you can ſuppoſe the King alone to have been the whole Common Council of the Kingdom, mentioned in theſe antient Writs.

Vi. Regiſt. Brev. p. 174 *& dein. per tot. Titulum Brevia de Statuto.*

But as for the reſt of your Inſtances of *Edward* the Second's and *Edward* the Third's Times, I think I can ſhew you that there is no general Rule to be drawn, from ſome few Examples; for though it is very true that the firſt of *Edward* the Second begins thus; *Our Lord the King hath granted*, &c. Yet it is plain, by the Statute itſelf, that it was made in and with the Aſſent of Parliament. The like I may ſay of the reſt of the Statutes of this King's Reign, though they do not all agree in Form, as you may ſee by the Statute of Sheriffs, 9 *Edw.* II. *Our Lord the King, by the Aſſent of the Prelates, Earls, Barons, and other great Eſtates, hath ordained and eſtabliſhed.* And though you would fain draw ſome mighty Conſequence from thoſe Phraſes in the Statutes of *Edward* the Third, and many of his Succeſſors, *by the Aſſent of the Lords, and at the Requeſt of the Commons*; as if the Conſent of the latter were not as neceſſary as the former: Yet indeed it is a meer difference in Form, and proceeds only from hence, that that Eſtate which found itſelf grieved, always Petitioned the King for Redreſs, and which amounted to as much as a Conſent; for you ſhall always find that the petitioning Part ſtill refers to that Body which was then oppreſſed, without their giving any other Aſſent; for certainly their requeſting to have an

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Act made, doth neceſſarily expreſs their Conſent. And to prove what I have now ſaid by Examples, pray ſee the 8th of *Hen.* VI. *c.* 1. where it is recited in the Preamble, "That our Sovereign Lord the King, willing graciouſly to pro-"vide for the Security and Quiet of the ſaid Prelates and Clergy, at the Suppli-"cation of the ſaid Prelates, *&c.* and of the Aſſent of the Great Men and Com-"mons aforeſaid, hath Ordained and Eſtabliſh'd." Where you may ſee, that the Aſſent of the Prelates is not here at all mentioned, becauſe it was needleſs, as being made at their Requeſt. And if Praying and Requeſting ſhould deſtroy the Legiſlative Power, I doubt whether *Edward* III. did not give away his, in his 14th Year, in a Statute concerning the Subſidy of Wools. The Preamble runs thus: "Nevertheleſs the King prayeth the Earls, Barons, and all the Commo-"nalty, for the great Buſineſs which he hath in hand, *&c.* that they would grant "him ſome Aid upon Wools, Leather, *&c.* Whereupon Deliberation being had, "the ſaid Prelates, Barons, and Commons of the Kingdom, have granted him "40 Shillings to be taken on every Sack of Wool."

But to convince you, that in the Reigns of *Edward* III. and *Richard* II. the Three Eſtates had a concurrent Authority with the King in the Legiſlative, I ſhall give you two Precedents more out of our unprinted Parliament Rolls: The firſt is 31 *Ed.* III. *m.* 13. which, being a Title to certain Statutes, begins thus: *Quædam Ordinationes & Statuta, facta pro communi utilitate Regni, per* Regem, Prælatos, Duces, Comites, Barones, & Communitatem *Regni Angliæ.* So likewiſe in *Stat. Roll* of 5 *Rich.* II. *m.* 21. the Title is, *Quædam Concordiæ, ſive Ordinationes, factæ de communi aſſenſu* Regis, Procerum, Magnatum, & Communitatis *Regni Angliæ.* Where no Man can doubt but that the Word *Communitates,* in theſe Records, muſt mean the *Commons,* all the other Eſtates having been already mentioned.

But to return to the matter, to let you ſee that not only the *Commons,* but alſo the *Lords,* have been oftentimes Petitioners, pray ſee theſe Authorities. The 1ſt is the Statute of Proviſors, 27 *Edw.* 3. runs thus: "Our Sovereign Lord the "King, with the Aſſent and Prayers of the Great Men, and the Commons of "the Realm of *England,* hath Ordained, *&c.*" And in the 4th of *Edw.* IV. it is recited thus: "The King, by the Aſſent, Advice, Requeſt, and Authority, "of his Lords Spiritual, Temporal, and Commons, *&c.* hath Ordain'd and "Eſtabliſh'd." In the Preamble of the Statute of 1 *Edw.* VI. *c.* 4. it is thus: "Wherefore the King, our Sovereign Lord, minding and entirely deſiring——— "at the humble Petition and Suit of the Lords and Commons in this preſent Par-"liament aſſembled, doth Declare, Ordain and Enact, by the Aſſent of the Lords "Spiritual and Temporal, and the Commons in this preſent Parliament aſſem-"bled, and by the Authority of the ſame." And that the Aſſent of the *Commons* was always neceſſary to the making of Laws, not as bare Petitioners, but as Aſſenters too, as well as the *Lords,* appears by this Proteſtation or Declaration of the *Commons* to *Edw.* III, which is ſtill to be found in the *Parliament Rolls* of 51 of *N.* 46. that King, which I ſhall read to you in *Engliſh,* out of the *Law French,* which perhaps you are not uſed to: "Alſo the ſaid *Commons* do petition our Lord the "King, that no Statute or Ordinance may be made or granted at the Petition "of the Clergy, unleſs it be by the Aſſent of the Commons; neither that the ſaid "*Commons* ſhould be obliged by any Conſtitution, which they may make for their "Advantage, without the Aſſent of the ſaid *Commons*: For they will not be obli-"ged to any of your (*viz.* the King's) Statutes or Ordinances made without "their Aſſent."

M. I do not deny, but that the Aſſent of the *Commons,* as well as *Lords,* hath been allowed as neceſſary for a long time; but whether the Conſent of either at firſt was ſo, is a great doubt, ſince we find the firſt antient Statutes (as I have already obſerved) to have been made wholly by the *King* alone. And I think the moſt antient Laws are the beſt Interpreters of the Original Legiſlative Power; *F. F. G. J.* and thence it appears, that many Proviſions, Ordinances and Proclamations, made *P.* 50. heretofore out of Parliament, have been always acknowledged for Laws and Statutes. We have among the printed Statutes, to this purpoſe, one called the *Statute of Ireland,* dated at *Weſtminſter* the 9th of *February,* 14 *Hen.* III. which is nothing but a Letter of the King to *Gerard Fitz-Maurice,* Juſticiar of *Ireland.* The Explanations of the Statute of *Glouceſter,* made by the King and his Juſtices only, were received always for Statutes, and are ſtill printed with them. Alſo the Sta-

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tute made for the Correction of the 12th Chap. of the Statute of *Glouceſter*, was ſigned under the Great Seal, and ſent to the Juſtices of the Bench, after the manner of a Writ Patent, with a certain Writ cloſed, dated by the King's Hand at *Weſtminſter*, 2 *Maii* 9 *Ed.* I. requiring, "That they ſhould do and execute all and "every thing contained in it, though the ſame doth not accord with the Statute "of *Glouceſter* in all things." 19 *Hen.* III. a Proviſion was made *de Aſſiſa Præſentationis*, which was continued and allowed for a Law until the Statute of *Weſtminſter* II. which provides the contrary in expreſs Words. So that in the old Statutes it is hard to diſtinguiſh what Laws were made by Kings in Parliament, and what out of Parliament, eſpecially when Kings called the Peers only to Parliament, and of thoſe how many, or whom they pleaſed (as it appears antiently they did) it was no eaſy matter to put a Difference between a Council Table and a Parliament, or between a Proclamation and a Statute. Not but that I own, in old Times there was a Diſtinction between the King's Special or Privy Council, and the Common Council of the Kingdom; and yet his Special Council did ſit with the Peers in Parliament, and were as Part thereof, and were of great and extraordinary Authority there, as may appear by divers Acts of Parliament, ſome of which I have already recited, as the Statute of *Weſtminſter* I. where it is ſaid: *Theſe are the Acts of* Edward, *made at his 1ſt Parliament, by his Council.* The Statute of *Acton Burnel*, 13 *Ed.* I. hath theſe Words: *The King for himſelf, and by his Council, hath Ordained and Eſtabliſhed.* And in *Articulis ſuper Chartas* there are theſe Proviſions: *Nevertheleſs, the King and his Council do not intend:* And, *Both the King and his Council, and all they that were preſent, Will and Intend, that the Right and Prerogative of his Crown ſhall be ſaved to him in all things.* And before theſe the *Commons* often petitioned the King; as 1 *Edw.* III. where *Magna Charta* was confirm'd, the Preamble is thus: *At the Requeſt of the Commonalty, by their Petition made before the King and his Council in Parliament, by the Aſſent of the Prelates, Earls and Barons*, &c. I could give you many more Examples of this kind, but that it is needleſs; only theſe may ſuffice to let you ſee, that the King's Council had a great Authority in thoſe Times, and perhaps was as antient as the Great Council it ſelf.

Ibid. p. 51.

1 E. 3. *Stat.* 2. *Preamb.*

J. E. M. G. p. 234.

Yet I cannot forbear to give you one or two Authorities more, to prove that the King, with the Advice and Conſent of a Council of his Earls, Barons, and other Wiſe Men, hath ſometimes taken upon him to repeal all the Statutes made in a precedent Parliament, as contrary to the Laws and Cuſtoms of this Realm, and to his Prerogatives and Rights Royal, tho' granted by him in manner of a Statute. And for this you may ſee the Statute of 15 *Ed.* III. at large in *Pulton's* Collection. So likewiſe the Preface of the Statute of *Weſtminſter*, 20 *Ed.* III. runs thus: That "*We* (*viz.* the King) by the Aſſent of our Great Men, and other Wiſe Men of "our Council, have ordained, *&c.*" Where you may obſerve, that here is no mention either of Lords Temporal or Commons. I could give you more Examples of this kind, were it not too tedious. From which Statutes it ſeems plain to me, that this King did ſometimes exerciſe a Prerogative of making and repealing Laws without Conſent of Parliament.

Pult. p. 111.

H. S. B. D. p. 721.

In the next place, I deſire you to take notice, that theſe Words you ſo much rely upon, *viz. By the Authority of this preſent Parliament*, and, *Be it Enacted by the King, Lords and Commons*, as if they were three co-ordinate Eſtates, was never in uſe till the Reign of *Hen.* VI. and *Hen.* VII. two notorious Uſurpers. And that the King's ſingle Anſwer to the Lords and Commons Requeſt is a ſufficient Act of Parliament, without any mention of the concurrent Authority of the Lords and Commons enacting the ſame, the Precedent I gave you of K. *Charles's* Anſwer to the *Petition of Right* may ſuffice, though you have not vouchſafed to give me any Return to it. So that I think theſe Inſtances may ſerve, inſtead of many Arguments, for the proof of this Truth, *That the Legiſlative Power* (as we phraſe it now) *is wholly and ſolely in the King, although reſtrained in the Exerciſe and Uſe thereof, by conſtant Cuſtom, unto the Counſel and Conſent of the Lords and Commons:* For *Le Roy le veult*, or the King will have it ſo, is the Imperative Phraſe, by which the Propoſitions of the Lords and Commons are made Acts of Parliament. And let the Lords and Commons agitate and propound what Laws they pleaſe for their Eaſe and Benefit (as generally all Laws and Statutes are more for the Eaſe and Benefit of the Subject, than the Advantages of the King) yet as well now, as formerly, in the time

time of the *Roman* Emperors, only *quod Principi placet, legis habet vigorem*; nothing but that which the King pleaſes to allow of, is to paſs for Law: The Laws not taking their coercive Force (as Judicious *Hooker* well obſerves) from the Quality of ſuch as deviſe them, but from the Power that giveth them the Strength of Laws. So that, to determine the Matter logically, the Legiſlative Power is either Largely and Improperly, or Strictly and Properly taken: Largely taken, it ſignifies any Power, which hath the Authority to provide the Materials of a Law, and to judge what is juſt, convenient, or neceſſary to be enacted; and to declare when any Matters, duly prepared, are made and granted into a Law: And this Miniſterial ſort of Legiſlative Power, improperly ſo called, the two Houſes have and exerciſe, yet by Authority from the Crown. But then the Legiſlative Power is Strictly and Properly taken for the Power of Sanction, or for that Commanding, Ordaining Power, which gives Life and Being to the Law, and Force to oblige the Conſcience of the Subject; and this is radically and incommunicably in the King, as Sovereign. And therefore (as I have already ſaid) all the antient Acts run in the King's Name alone; and from the Legiſlative Power, thus properly taken, the Laws are properly called the King's Laws, and the Violation of them is puniſhable as ſuch. *H. D. L.* p. 49.

F. You have made a very long Speech, and taken a great deal of pains to perplex a Queſtion in it ſelf very eaſy to be reſolved; and to which I need return you no other Anſwer than what *Bracton* tells us, in his third Book, Chap. 9. *De Actionibus. Nihil aliud poteſt Rex in terris ſuis, cum ſit Dei miniſter & vicarius, niſi id ſolum quod de jure poteſt: Nec obſtat quod dicitur, Quod Principi placet, legis habet vigorem; quia ſequitur in fine legis, Cum lege regia, quæ de imperio ejus lata eſt*; i. e. *non quicquid de voluntate Regis temere preſumptum eſt, ſed quod conſilio Magiſtratuum ſuorum, Rege authoritatem præſtante, & habita ſuper hoc deliberatione.* So that you ſee, in the time when this Author writ, the King could do no more by his Prerogative, than the Law allowed him to do: And tho' it is true, it is his Will and Authority that gives Vigour to the Law; yet this only, as it is declared in Parliament, and in thoſe Acts which had before received the Conſent of his Great Council, here called the King's Magiſtrates: And therefore you have done what you can to confound the difference between the King's Declaration, or Writs explaining and enforcing the Common Laws of *England*, or elſe interpreting former Acts of Parliament already made; which was a Prerogative often exerciſed by the King and his Council in Parliament, which then conſiſted of all or moſt of the Judges, and Great Officers of the Kingdom, of which I ſhall ſpeak more at large by and by. And I confeſs, we are much in the dark, becauſe our antient Parliament Rolls are all loſt, and conſequently the Statutes therein contained: So that we have almoſt nothing left of them, but ſuch Copies or Remains, as were preſerved by Judges and Lawyers in thoſe and ſucceeding Times, whilſt they were ſtill in being.

Therefore I think I may at preſent boldly affirm, that if that, which you call the Statute of *Ireland*, was ſo far from being founded upon ſome former Statute not now in being, it was no Act of Parliament at all, but only the King's Writ to the Chief Juſticiar of *Ireland*, commanding and enforcing the Common Law of *England*, in the Caſe of *Coparceners*, to be obſerved in *Ireland*. The like I may ſay to the Explanation of the Statute of *Glouceſter*, which might be no more than the Interpretation of the King and his Juſtices, of the Senſe of ſome Articles in that Statute; and this for its greater Authority was exemplified under the Great Seal, and ſo ſent to all the Courts at *Weſtminſter*, and often to the Sheriffs of all the Counties in *England*; yet without altering the Statute in ſome Points, as you would have it. The like I may ſay of that Statute of *Acton Burnel*; and therefore it is very raſhly done, to conclude, that tho' we have not the Original Acts and Records of Parliament of that time, that therefore ſuch Statutes were made by by the King alone, in his Privy Council. So that I muſt ſtill continue of the ſame Opinion with the Great *Selden* in this Point, who in his *Mare Clauſum* tells us: "It is moſt certain, that according to antient Cuſtom, no Anſwer is given either "by the King, or in the King's Name, to any Parliamentary Bill, before that "Bill, whether it be brought in firſt by the Lords, or by the Commons, "hath paſs'd both Houſes, as is known to all that are verſed in Parliamen-"tary Affairs." Which if it hath been the antient Cuſtom of this Kingdom, it ſignifies very little in what Form the Law is expreſs'd, whether in the

King's Name only, as giving the laſt Aſſent thereto, or elſe as his Conceſſion to the Lords and Commons Petition, as long as you grant that their Aſſent was neceſſary: For ſure, whoſoever petitions another to do a thing, which he cannot impoſe upon him without his Requeſt, muſt give his Conſent to the doing it, unleſs you can prove, that it could be done whether the Petitioner would or not. And this, by the way, will ſerve to anſwer an Objection, which, tho' you inſiſt much upon it, is ſcarce worth it, *viz.* the King's Anſwer to the Lords and Commons *Petition of Right*, which was indeed no Grant or Conceſſion of any new Rights or Privileges from the King to the People; but only a Declaration of ſeveral antient Rights and Liberties of the Subjects, which had been very much broken and infringed of late; and therefore the King's Anſwer was very proper, *Soit Droict fait comme eſt deſire:* But that there is a Right plainly acknowledged, I ſuppoſe you will not deny.

The next Miſtake you fall into proceeds from your confounding the King's Extraordinary Council in Parliament with the King's Special or Privy Council, and in a manner making this a fourth Eſtate; by whom (as you ſuppoſe) as well as by the Lords and Commons, Laws were often made; whereas indeed neither the one nor the other is true. For tho' I grant that there is often mention made, in our antient Statutes or Records, of the King's Council in Parliament; yet this is not to be underſtood of his Privy Council, but of a Special Council, with whom our Kings formerly ſate during the Time of Parliament, and before whom and to whom, we find, by divers Records, that both the Lords and Commons did often petition, as you your ſelf do truly affirm; but that this was not the King's Privy Council, but another quite different from it: And to which it ſeems to me that *Fleta* refers, in his 2d Book, Cap. 2. *Habet enim Rex Curiam ſuam in Concilio ſuo in Parliamentis ſuis; præſentibus Prælatis, Comitibus, &c.* And this Council conſiſted of all the great Officers of the Kingdom, *viz.* the Lord Treaſurer, Chancellor, and Keeper of the Privy Seal, Maſter of the Wardrobe, the Judges of the King's Bench, Common Pleas, Barons of the Exchequer, Juſtices *Itinerant*, and Juſtices of Aſſizes, with ſuch of the dignified Clergy, as it pleaſed the King to call: Which that they were altogether diſtinct from the King's Privy Council, appears plainly by this, that the latter never included all the Judges, nor did the Privy Council ever exerciſe any Judicial Authority in Parliament, as this Council did in thoſe days; but that this Council conſiſted of the Parties above mentioned, ſee the Statute of *Eſcheators*, made 29 *Edw.* I. And in the *Placita Parliamentaria* of that Year, the Statute runs thus: *Per Concilium Regis concordatum eſt coram Domino Rege ipſo conſentiente*, &c. But in the *Cloſe Roll* of this Year it is clearly explain'd who were of this Council, their Names being there particularly recited, *viz.* all the Great Officers above mentioned, together with the Judges of the King's Courts, and Juſtices *Itinerant*, *&c.* Which is likewiſe explained by the *Parliament Roll*, 9 *Ed.* II. *Rex voluit quod Dominus Cancellarius, Theſaurarius, Barones, Scaccarii, Juſticiarii, & alii de Conſilio Domini Regis Londin. exiſtente, convenirent.* I could give you many more Examples of this kind, but I ſhall give you but two more, to prove that this Council in Parliament could not be the King's ordinary Privy Council. The firſt is in *Placit. Parliament.* 2 *Ed.* III. in a Cauſe betwixt *Thomas Fitz-Peter* and *Alinora* Wife of *John de Mowbray*, *coram Rege*. The Record is long, but concludes thus, directed to the Juſtices: *Et ſi difficultas aliqua ſubfuerit, quare præmiſſa facere non poſſitis, tunc Placitum illud uſque in prox. Parliamentum noſtrum adjornetis, ut ibidem tunc inde fieri valeat quod de* Conſilio noſtro *fuerit faciendum.*

In Raſtal's & Pulton's *Stat. fol.* 52. 83. *Pla. Parl.* 29 Edw. I. *fol.* 273. *Rot. Clauſ.* 29 Edw. I. *m.* 15. *dorſo. Numb.* 9.

Rot. 97.

By which we may very well gather, that this was none of the King's Ordinary or Privy Council, or elſe to what purpoſe was this Cauſe adjourned to the Meeting of the next Parliament; ſince, if it had been to have been determined by the Privy Council, it might have been heard forthwith.

M. 12. 13.

I ſhall give you but one Inſtance more, out of the *Cloſe Roll* of the 41ſt of the King, wherein a Cauſe between *Elizabeth* Wife of *Nicholas D'Audley*, and *James D'Audley*, in a Controverſy between them (touching certain Lands contained in the Covenants of her Marriage) is ſaid to have been adjudged *devant ſon Conſeil, c'eſt a ſcavoir, Chancellor, Threſorier, Juſtices, & autres Sages, aſſemblez en la Chambre des Etoiles; i. e.* before his Council, *viz.* the Chancellor, Treaſurer, Juſtices, and other Wiſe Men, aſſembled in the Star-Chamber. So that when any thing in our old Statutes is ſaid to be ordained by the King and his Council, it is always

always to be underſtood, not as if this Council were a fourth Eſtate, whoſe Aſſent or Advice was neceſſary to the making of Laws, for then they would have had the ſame Power ſtill; but only according to the Cuſtom of thoſe Times, when moſt Acts of Parliament were drawn by them, and that the King paſs'd none without their Advice: It was then ſaid to be done by the King and his Council (*viz.* in Parliament) and I conceive the Power of this Council continued till the Beginning of the Reign of *Henry* the ſeventh, when this Court was by Act of Parliament annexed to that of the Star-Chamber, where alſo this Council of the King uſed to meet before (as appears by the Caſe I have laſt cited) and had afterwards only to do with Criminal Cauſes, and that as well out of as in Parliament: And that King *Henry* the ſeventh not caring to exerciſe his Judicial Power in private Cauſes, as his Predeceſſors had done, or to make uſe of their Advice either in the drawing or paſſing of Bills, which now began to be drawn by Committees in either Houſe, wherein thoſe Bills were preferred, this Council came by degrees to grow quite out of uſe, as it is at this day. I hope you will pardon this long Digreſſion, which I have been drawn into, to rectify a common Miſtake of the Gentlemen of your Opinion, who, when they find any thing in our antient Statutes or Records, wherein the King's Council is mentioned, preſently entertain ſtrange Fancies of the Antiquity and Authority of the Privy Council.

M. I am ſo far from thinking this Diſcourſe you have now made to be at all tedious, that I give you many thanks for it, ſince it gives me a light into many things which I confeſs I did not know before; and I ſhall better conſider the Authorities you have now given me, and if I find they will hold good, ſhall come over to your Opinion in that point, tho' I am not as yet ſatisfied as to the Legiſlative Power of the two Houſes; and therefore pray proceed to anſwer the reſt of the Precedents I have brought on that Subject.

F. I ſhall readily comply with your Commands; and therefore to come to thoſe Statutes of the 15th and 20th of *Ed.* III. which you ſuppoſe to have been repealed by that King without the Conſent of the Lords and Commons. I grant indeed, that the Statutes you mention were intended to be repealed by the King, without Aſſent of Parliament: Yet this was not done by himſelf and his Council alone, as you ſuppoſe; but by a Great Council of Earls and Barons, which the Kings of *England* in thoſe Days were wont to call upon emergent Occaſions, and for the doing of that which they thought Parliaments could not, or would not ſo readily perform; as in this pretended Repeal of the Statute you mention. And tho', I grant, this was a great Breach upon the fundamental Conſtitutions of the Kingdom, yet that it was done in ſuch a Great Council as I have now mentioned, I refer you to this pretended Statute it ſelf, and to your Recital of it. And that the King often called ſuch Great Councils, appears by an Agreement of Exchange made for the Caſtle of *Berwick*, between King *Henry* IV. in the fifth Year of his Reign, and the Earl of *Northumberland*; where the King promiſeth to deliver to the Earl, Lands and Tenements to the value of the Caſtle, by theſe Words (which I ſhall render out of *French* from the Original which remains in the Tower): *By the Advice and Aſſent of the Eſtates of the Realm, and of his Parliament (ſo that the Parliament happen before the Feaſt of St.* Lucie) *otherwiſe by the Aſſent of his Great Council, and other Eſtates of his ſaid Realm, which the King will cauſe to be aſſembled before the ſaid Feaſt, in caſe the Parliament do not happen, &c.*

And yet notwithſtanding this high Strain of Prerogative, neither King *Edw.* III. himſelf, nor the Parliament, were ſatisfied with this Repeal of thoſe Statutes you have mentioned; but in the next Parliament, held in his 17th Year, paſſed a formal and legal Repeal of them, as by the *Parliament Rolls* of that Year, remaining in the Tower, doth plainly appear; and which I could give you at large, did I not fear to be too tedious. But I think it fit to let you know this, becauſe moſt ordinary Readers ſeeing no more appear in Print in our Statute Books, are apt to imagine, that the Kings of *England* in thoſe Days did often take upon them, without Authority of Parliament, to make and repeal Laws. But as for your next Inſtance of the Statute of 20 *Ed.* III. it is much weaker; ſince, tho' I confeſs that in the Preface to theſe Acts there is only mention of the Great Men, or *Grantz* (as it is in our old *French*) and other Wiſe Men of our Council; yet I ſhall prove at another time, that under this Word *Grantz* were meant the *Lords* in Parliament, as by the Wiſe Men of our Council are underſtood the *Commons*. And it

Rot. Parl. 17 *Ed.* 3. *Numb.* 23.

appears by the Writs of Summons and Parliament, of the 20th of *Edward* III. that the Commons were preſent at this Parliament; therefore it ſeems moſt reaſonable to interpret the Senſe of many ancient Statutes, wherein the King alone is ſaid to make and ordain Laws, by thoſe later or more modern ones, wherein the King by the Conſent of the Lords and Commons, or by Authority of Parliament, is ſaid to have ordained them: Since the true Stile and Meaning of ancient Laws, which were penned with the greateſt Brevity, ought to be ſtill interpreted by the modern ones, and not the modern ones by the ancient. So that I am of the Learned Mr. *Lambard*'s Opinion, who in his *Archaionom*, or Diſcourſe upon the High Courts of Juſtice in *England*, expreſly tells us, "*That whether the Laws are* Pag. 269. Edit. 1635. "*ſaid to be made by the King, and his Wiſe Men, or by the King and his Council, or his* "*Common Council*; or by the King, his Earls, Barons, and other Wiſe Men, or "after ſuch other like Phraſes, whereof you meet with many in the Volumes of "Parliaments: It comes all to this one Point, namely, That the King, his Nobi- "lity and Commons, did ordain and enact the ſame. And which is more, if you "ſhall find any Acts of Parliament ſeeming to paſs under the Name and Autho- "rity of the King only, as there be ſome that have that ſhew indeed; yet you "muſt not by and by judge, that it was eſtabliſhed without the Aſſent of the other "Eſtates.

As for the reſt of your Inſinuations, rather than Arguments againſt the Antiquity of thoſe Expreſſions, *Be it enacted by Authority of Parliament*, or, *Be it enacted by the King, Lords and Commons*; which bear ſo hard upon you, to prove that theſe laſt have a ſhare in the Legiſlative, that they were introduced in the Reigns of *Hen.* VI. and VII. two Uſurpers, and but in the Nonage of the former; I think I ſhall be able to ſhew you, that you are very much out in your account; for there are much ancienter Authorities, wherein the ſame Words, or others equivalent, have been uſed in our Statutes: And firſt, pray call to mind the Statute of *Meaſures* already recited; where it is ſaid, *That by the Conſent of the whole Realm of* England, *the Meaſure of our Sovereign Lord the King was thus made*, &c. which certainly muſt mean Pag. 27. the Aſſent of all the Eſtates aſſembled in Parliament. And my Lord *Coke* tells us in his 3d *Inſtitutes*, of an ancient Record that he had ſeen of the 7th of this King, wherein it was ſaid to be *Enacted by the King, the Lords Spiritual, Temporal, and Commons*. But ſince I have given you Precedents enough of Statutes, which are ſaid to be made or ordained *by the King, with the Aſſent of Lords Spiritual and Temporal, and Commons*; I will ſhew you one where the King is not at all mentioned; and that is in *Raſtal*'s Statutes, 4 *Hen.* 4. *cap.* 24. concerning *Aulnage of Clothes*, which runs thus; *Be it ordained and accorded by the ſaid Parliament*, without any mention at all of the King. And to let you ſee that theſe fatal Words you except againſt, were in uſe before the Reign of *Hen.* 6. pray ſee 9 *Hen.* 5. *cap.* 4. concerning the *Miſpriſion of Clerks in writing*, which runs thus; *The King hath now declared, and ordained by Authority of this preſent Parliament, that the Juſtices*, &c. which muſt certainly refer to the Lords and Commons, unleſs you can make the King alone to be the whole Parliament: Whereas if that Phraſe had began from Uſurpation, it would have been firſt found in the Statutes of *Henry* the 4th. But to let you ſee that *Edward* the 4th, though no Uſurper, yet did not think that theſe Words did abate any thing of his Royal Prerogative, pray ſee the Statute Book in the 4th of that King, *Cap.* 1. wherein it is recited, *That the King, by the Advice, Aſſent, Requeſt and Authority of the Lords Spiritual and Temporal, and Commons in Parliament aſſembled, hath ordained and eſtabliſhed: And that by Aſſent of Parliament, and by Authority of Parliament*, is all one and the ſame, ſince the Aſſent of Parliament makes its Authority: Pray ſee the expreſs Judgment in this Point of the Lord Chief Juſ- Pag. 104. tice *Crew* and Juſtice *Doderidge*, given in the great Caſe of the Earldom of *Oxford*, reported in Judge *Jones*'s Reports.

To conclude; Though I do not deny His Majeſty's Negative Vote to all Acts of Parliament, yet this Prerogative can be concluded only from his giving his laſt Aſſent to a Law; for when a Bill begins from himſelf, the Two Houſes have likewiſe a Negative upon him; which is evident in an Act of *Pardon*, which proceeds originally from the King, and being ſent down to the Parliament, though neither the Lords nor Commons can add or alter one tittle to, yet may they notwithſtanding his prior Aſſent, refuſe the whole Bill if they pleaſe, though already paſs'd under the Great Seal. And though I likewiſe grant, that it is the *Le Roy le Veult*,

Veult, that by yielding the higheſt and laſt Aſſent, gives the enacting Force to the Law; and thus, I grant, the King may in a Logical Senſe be ſaid thereby to make the Laws according to that known Maxim, *Quod dat formam, dat eſſe rei*: Yet this does not hinder but in a legal Senſe, according to the expreſs Declaration of our old Lawyers, and Acts of Parliament, the Laws owe their Obligation to the joint Conſent of King and Parliament; and his giving his laſt Aſſent or Form to the Law, no more proves his ſole Legiſlative Power, than it would do that of the Lords or Commons, if either of them by the Conſtitution of the Government were to give their Aſſents laſt thereunto. So that I think upon the whole matter, no Man can reaſonably deny but that legally the Two Houſes of Parliament have alſo their ſhare not only in framing, but enacting of all Bills that ſhall paſs; for otherwiſe they would ſignify no more than the Committee of Articles in *Scotland*, or the King and Council of *England* in relation to *Ireland*; the former of which draws up all Bills that are to paſs in the Parliament of that Kingdom, and the latter muſt approve or reject all Bills that ſhall paſs in the Parliament of *Ireland*: Whereas the Authority of our Parliament conſiſts in their conſenting to, and enacting together with the King all Statutes whatſoever. And this Diſtinction I think may very well reconcile *Bracton* with *Forteſcue*; the former of which ſays, *Quod Leges ligant ſuum Latorem* (meaning the King) and the latter (in the place I have already cited) affirms, that the People are governed by thoſe Laws, *quas ipſe fert*, which they themſelves make: And this I think is to aſcribe to the King as much Power as is requiſite to a Civil Sovereign, and yet to leave a ſufficient ſhare to the People to ſecure themſelves from Tyranny.

M. I muſt beg your pardon if I cannot be ſatisfied with your Diviſion of the Legiſlative Power, between the King and the Two Houſes of Parliament, ſince it is againſt the Senſe of our old Lawyers *Glanville* and *Bracton*, who, as you yourſelf acknowledge, make the King the Sole Legiſlator. And though I confeſs *Forteſcue* gives the People a ſhare in it, yet he is but a modern Author in compariſon of the other two, and writ to ſupport the uſurped Title of *Henry* the Sixth. So that I cannot comprehend how the Two Houſes can have any ſhare (properly ſpeaking) in the Legiſlative Power, without falling into that old Error of making the King one of the Three Eſtates, and ſo co-ordinate with the other Two: Whereas if the King be a Monarch, that ſignifies in *Greek* the Government of one Perſon, whereas by giving the Two Houſes a part in the Legiſlative, you divide it into three ſeveral ſhares. But indeed there is ſo cloſe a Conjunction between all the Parts of Sovereign Power, that the one cannot be ſeparated from the other, but it will deſtroy the Form of the Government, and only ſet up an irregular Commonwealth in its place, which will ſcarce be able to hold long together, without falling into perpetual Quarrels and Diſputes about the Encroachments upon each other's Power and Privileges.

And it appears as well by the whole Tenor of our Laws, as alſo by divers expreſs Statutes, that the King is the Sole Supreme, and conſequently the Sole Legiſlative Power: The firſt of theſe I ſhall prove from the common Indictments of Treaſon, Murder, Felony, *&c.* Which run always, *Encounter la Corone, & la Dignitie de Roy*; and the Proceſs againſt ſuch Offences are called the *Pleas of the Crown*, becauſe they are againſt the Crown and Dignity of the King. So that it is not the Dignity and Authority of the Lords and Commons which is violated, but the Dignity and Authority of the King.

In the next place, this Opinion is contrary to the expreſs Declaration of divers of thoſe very Parliaments which you pretend have exerciſed a ſhare in the Legiſlative: For you cannot deny, that many of our ancient, as well as modern Statutes, were made and drawn up in the Form of a Petition from the Lords and Commons, or both of them, to the King: And it is very ſtrange, that one Fellow in the Supreme Power ſhould ſo humbly petition the other. But, 2. though Time hath altered the Form of Petitioning into Bills, yet both Lords and Commons have been often uſed to call the King, *Our Dread Sovereign, Our Sovereign Lord, Our Leige Lord*, and the like; and to ſtile themſelves, *We your Majeſty's moſt Humble and Faithful Subjects*, or *moſt Dutiful and Obedient Subjects*; and in that humble Stile, to beſeech him to enact ſuch and ſuch things; which ſure they could have done alone, had they been co-ordinate with him in Law-making. Laſtly, If they were Copartners with him in the Supreme Power, how came they to declare (as they did in the Preamble *H. D. L. p. 32.*

to

to the Statute of the 25th of *Henry* VIII. which you yourself have quoted) *that the Realm of* England is an Empire, governed by one Supreme Head and King, unto whom the Body Politick of the Nation, compacted of several Sorts and Degrees of People, divided in Terms of Temporality and Spirituality, owe and bear, next unto God, a Natural and Humble Obedience? Now how came they here farther to declare this Supreme Head of the Clergy and Laity, to be furnished with Plenary, *Whole and entire Power by the Goodness and Sufferance of Almighty God?* Certainly they can have no share in it if it be plenary, wholly and entirely in him: Or how came they in the 1st Statute of Queen *Eliz. c.* 7. (being a Recognition of the Queen's Supremacy) to acknowledge, that all Power, Temporal and Spiritual, was deducted from her, as the Supreme Head, and *that they were her most Faithful and Obedient Subjects*; and that though they did in Parliament represent the Three Estates of this Realm, yet that *She was the only Supreme Governor thereof*: Which was pursuant to a Statute to the same purpose, in the 2d of *Edw.* VI. *c.* 2. wherein it is declared, *That all Authority of Jurisdiction, Spiritual and Temporal, is divided and deducted from the King's Majesty, as Supreme Head of these Churches and Realms.* Not to mention the Oath of Supremacy itself, *That the King or Queen's Highness is the only Supreme Governor of this Realm:* Which these Statutes would never have acknowledged, had it not been consonant to our ancient Common Law; by which it is expresly declared in that old Law Book, (written as it is supposed by Bishop *Bretton*) in the very first Leaf thereof, in the Name of King *Edw.* I. himself; *We will, that our Jurisdiction be above all other Jurisdictions*; which had been spoken in vain, if all other Powers had not been derived from, and so subordinate to, the King's. Besides, I could prove this farther from History and Matter of Fact.

F. I thank you, Sir, and I desire I may answer what you have now said, before you pass to another Head; for I doubt the time will not give us leave to discourse much further on this Subject to Night. In the first place therefore, I must tell you, that the main Foundation of your last Arguments is founded upon a Supposition which I altogether disown, *viz.* Co-ordination or Division of the Sovereign Power between the King, and the Two Houses: For I have always supposed, that the King continues still Supreme, and that (as the *Modus tenendi Parliamentum* declares) He is *Principium, Caput & Finis Parliamenti*; that is, he can call and dissolve Parliaments when he pleases; and likewise, that the Executive Part of the Government rests solely in him, as also the Power of making War and Peace: And even in the Legislative itself, that the King hath more eminently (though together with the Parliament) a Supreme Enacting Power, without which it cannot be a Law. All this being consider'd, you will find that here is no Division of the Legislative Power; since neither the King, nor the Two Houses, have it solely and compleatly in themselves; but it is jointly executed by them all Three, as one entire Politick Body or Person. So that neither can they make any Law without him, nor he enact any without their Consent; and he, by giving his Consent last, gives it the Force and Sanction of a Law, and he is therein the Supreme, *i.e.* the last or ultimate Power, (in the true Sense of that Word) nay, the only Supreme Power, unless you could suppose two Supremes, that is, two Highest Powers at once in the same Kingdom: But that for all this, the Two Houses are not subject to the King in Matters relating to Legislature, may farther appear, in that the King cannot command them to give him what Money, or to pass what Laws he pleases: Since if he should go about to do so, they might (as I suppose you yourself will grant) lawfully disobey him; which they could not do without apparent Disloyalty, and high Disobedience, were they in this, as they are in other things, relating to the Peace and Defence of the Kingdom, subject to his Commands, when legally issued.

But to return you a more particular Answer to what you have said, to prove the King to have the sole Legislative Power: As to what you pretended I have quoted out of *Glanville*, if you please better to consider of it, you will not find that he gives the King any more than an enacting Power, together with his Great Council: For though he tells us, *Quod Principi placet, Legis habet Vigorem*; yet mark what follows, *eas scilicet quas super dubiis in consilio definiendis Procerum quidem consilio, & Principis antecedente Authoritate constat esse promulgatas.* Where, by the last *consilio*, is meant somewhat more than meer Advice, as I have already proved. But as for

Bracton,

Bracton, though he agrees with *Glanville* in making the King's Authority neceſſary to the Eſſence of a Law: Yet he is more expreſs than the other in making the Advice and Conſent of the Great Council, or Commonwealth, alſo neceſſary to its being, as you may remember by theſe Words; *Cum Legis vigorem habeat, quicquid de Conſilio & de conſenſu Magnatum, & Reipublicæ communi Sponſione, Authoritate Principis præcedente, juſte fuerit definitum.*

But further, to let you ſee how much you are out in your Argument, whereby you would prove from the Form of our Indictments of Treaſon, *&c.* That the King hath the Sole Legiſlative Power of the Kingdom; I ſhall ſhew you, that all our ancient Laws, as well Common as Statute, do declare the contrary: Since divers Acts of Parliament have expreſly affirmed, that ſuch and ſuch Offences were Treaſon, not only againſt the King, but againſt the King and the whole Realm too: Pray take theſe Inſtances; ſee the Statute 1 *Edw.* 3. *c.* 1. Wherein *Hugh de Spencer*, both the Father and Son, are by the King and Parliament declared Traitors and Enemies of the King, and of his Realm: See likewiſe 28 *Hen.* 8. *c.* 7. Wherein the Crown is ſettled by Act of Parliament on *the Heirs of his Body, begotten on Queen* Jane, *or by any other after Marriage; and that the Offenders that ſhall interrupt ſuch Heirs in their peaceable Succeſſion, they, with their Abettors, Maintainers, &c. ſhall be declared and adjudged High Traitors to the Realm.* And therefore divers ancient Indictments in *Stanford*'s Pleas of the Crown, are laid *contra pacem Regis & Regni.* And that the Parliament hath reſerved to itſelf a Power by the Statute of the 25th of *Edw.* 3. to determine what Crime ſhall be adjudged Treaſon, beſides conſpiring to kill the King, and thoſe other Offences ſpecified in the ſame Statute, you may conſult the Statute at large. But that theſe Offences can be no other than an Endeavour to alter the Government, or Fundamental Laws of the Kingdom, I think is evident, ſince all Offences relating to the Lives, or Honour of the King, Queen, and their eldeſt Son, are there particularly ſpecified; and it was by Vertue of this Statute, that the late unfortunate Earl of *Strafford* was firſt impeached by the Commons, and afterwards attainted by Act of Parliament in the Year 1641. but whether juſtly or not, it is not my Buſineſs now to determine: It is ſufficient that it was then granted by the King himſelf; that if the Earl had been really guilty of Deſtroying the Government, and Introducing an Arbitrary Power, he might have been deſervedly condemned.

But that the Power of Making and Diſpenſing with Laws, is particularly apply'd not only to the King, but to the Lords Spiritual, Temporal, and Commons; pray remember the Preamble of the Statute I have already cited of the 25th of *Hen.* 8. *c.* 21. wherein it is ſo expreſly declared, as alſo by the 24th of this King, *chap.* 12. the Preface of which Statute runs thus: "And whereas the "King's moſt Noble Progenitors, and the Nobility and Commons of the ſaid "Realm, at divers and ſundry Parliaments, as well in the Time of King *Ed*"*ward* 1ſt. *Edward* 3d. *Richard* 2d. *Henry* 4th. *&c.* made ſundry Ordinances, "Laws, Statutes and Proviſions, for the entire and ſure Conſervation of the Pre"rogatives, Liberties and Preheminences of the ſaid Imperial Crown of this "Realm, *&c.*" Where pray note, that the making of all theſe Statutes, is aſcribed to the Lords and Commons, as well as to the King: Which is alſo farther acknowledged by the ſaid King *Henry*, when in a ſet Speech to the Parliament, reported by *Crompton* (in the Caſe of Errors) he ſaid theſe Words; "We "being informed by our Judges, that We at no time ſtand ſo highly in our Eſtate "Royal, as in the time of Parliament, wherein, We as Head, and you as Mem"bers, are conjoined and knit together into one Body Politick." And ſure then, if the King's Simile be true, whatſoever Functions are performed by the whole Body, muſt be done by the Members as well as by the Head. I ſhall ſum up all I have ſaid into this Syllogiſm, That Power which cannot make or enact any new Law without the Advice and Conſent of two other Bodies, is not the Sole Legiſlative Power: But the King is that Power which cannot, *&c. Ergo*, The King is not the Sole Legiſlative Power.

M. I ſhall not longer diſpute this Queſtion with you, ſince I own the Two Houſes have claimed, for ſome Ages paſt, a ſhare in the Legiſlative, though in a large and improper Senſe, as you yourſelf do partly grant: And though for the more juſt and equal Courſe, our Kings have for a long time admitted the Three Eſtates, *viz.* the Lords Spiritual, Temporal, and Commons, into a ſeeming ſhare of the Legiſlative

giſlative Power: Yet this was not by Conſtraint, nor by any Fundamental Conſtitution of the Government, as you ſuppoſe; but only from their own meer Grace and Favour, to make Laws by the Conſent of the whole Realm, becauſe that no one part thereof ſhould have any cauſe to complain of Partiality: And though I grant the King is bound to obſerve theſe Laws when made, by vertue of his Coronation-Oath, ſo as that he cannot alter them without their Conſent; yet is he ſtill above the Law, by virtue of his abſolute Monarchical Power, and is not ſubordinate to it, or ſo bound by it as to be reſponſible to the People for any Breach committed by him upon it; for that were derogatory to the Sovereign Power, and inconſiſtent with the Nature of Monarchy, and were to ſet up the Law (which is but a Creature of the Prince's making) above his Sovereign Authority: And this would make our Monarchy a kind of Government which would neither be Monarchical, nor yet a Republick, but ſome mungrel thing made up of both. So that I take the Notion of a Mix'd Monarchy, to be a Contradiction *in adjecto:* A Limited Monarchy, I confeſs, there may be, either by the Monarch's own voluntary Grant or Conſent, as in this Kingdom; or elſe on Conditions impoſed upon a Prince by others, either by a Foreign Power, as in Tributary and Feudatory Kingdoms; or elſe by the Natives of the ſame Country, as in ſome Elective Kingdoms and Principalities: But then ſuch Limitations of Monarchical Power repreſent a Prince as it were fetter'd, and who cannot act as he would, and ought, for the Advantage and Welfare of his People, if he had his Liberty, and the full Exerciſe of his Sovereign Power: And therefore in moſt Governments limited after this manner, the Sovereignty ſtill remains in the Senate or People that elected the King: Which makes me think it a Soleciſm in Politicks to affirm, that a Monarch (properly ſo called, and ſtill continuing ſo) could be thus limited by Laws, or Fundamental Conſtitutions, as you call them at the firſt Inſtitution of the Government: For if he were thus limited, that Power that could thus limit him, muſt be either Superior or Inferior to him. Superior it could not be, becauſe the People that could put thoſe Conditions or Limitations upon him, could not be his Superiors in the State of Nature, before they made him King; neither could they be his Inferiors, becauſe an Inferior Power can never limit a Superior: And ſince all our Laws, (as well as the Oath of Allegiance and Supremacy, we take to the King) do own him to be the Sole Supreme Governor of this Realm, I cannot underſtand how this Limitation *ab extra*, can conſiſt with the King's Supremacy; for if he be thus limited and reſtrained, how is he Supreme? and if reſtrained by ſome Law, is not the Power of that Law, and of them that made that Law, above his Supreme Power? And if by the Direction of ſuch Law only he muſt govern, where is his Supreme Power? So that then the Law muſt rule and govern the Monarch as a Superior, and not the Monarch the Law; and he hath at beſt but a Gubernative and Executive Power.

Laſtly; If this Power of the Prince were limited at the Original Conſtitution, there muſt be a Power appointed in ſome Council or Senate (call it a *Parliament*, or *Aſſembly* of the States, or by what Name you pleaſe) whoſe buſineſs it muſt be to ſee them exactly kept and performed: Now theſe Men muſt either have a Power barely of adviſing the Monarch, and perſuading him to obſerve theſe Fundamental Limitations; or elſe they muſt alſo have a Power of forcing or compelling him, if he will not hearken to their Advice and Remonſtrances: If they have no more than the former Power, that you'll ſay ſignifies little, ſince the King may refuſe to hearken to them if he pleaſes, and may do what he will notwithſtanding; but if they have alſo a Coercive Power over him, and may reſiſt or puniſh him for his Tranſgreſſions, he will then ceaſe to be a Monarch; ſince he cannot be ſo, who is accountable to any Power, either equal or ſuperior to himſelf: And this our late Parliaments have been well aware of, when they renounced all Coercive Power over the Perſon of the King, and any Right of making War, either Offenſive or Defenſive, againſt him: So that beſides the Hiſtory of Matter of Fact, which I can further give you, to prove our Kings to have been at firſt abſolute Monarchs; I think the very *Hypotheſis* of a Mix'd, or Limited Monarchy, labours under ſuch inſuperable Difficulties and Abſurdities, that I cannot conceive how thoſe Limitations by which we find the King's Prerogative now reſtrained, could ever proceed from any higher Cauſe than the free Grants and Conceſſions of the King's Predeceſſors, confirmed by his own Coronation-Oath:

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Which though I acknowledge he is bound to obſerve, and that if he breaks it, he commits a great Sin againſt God; yet it is only he that muſt puniſh him for ſo doing, ſince the Oath is not made to the People, but to God alone.

F. Notwithſtanding what you have now ſaid, I hope I am able to ſhew you, that all your Arguments againſt a Mix'd, or Limited Monarchy, are more ſubtile than true. For as to your firſt Argument from the Word *Monarch*, I grant indeed, that ſtrictly ſpeaking, the Word *Monarch* and *Monarchy* ſignify a ſingle Ruler, and the Government of one alone: Yet in common Acceptation, or according to the Laws and Conſtitutions of ſeveral other Kingdoms, beſides *England*, as in the *Empire*, in *Denmark*, and *Sweden*, the Emperor, and thoſe Kings, have been called *Monarchs*, and thoſe Kingdoms *Monarchies*: And though by the Original Conſtitution of thoſe Governments, thoſe Princes have not been inveſted with a pure Imperial Authority, ſuch as that of the *Roman* Emperors of old; yet ſince they had the Executive and Gubernative Part of the Government committed to them, and that they were look'd upon as the Heads of thoſe Kingdoms, and that the Government did therein partake more of Monarchy than of any other Form, thoſe Princes have been always called *Monarchs*, notwithſtanding there was a very great Mixture of *Ariſtocracy* in the Empire, and in *Denmark*, and both of *Ariſtocracy* and *Democracy* in *Sweden*. The like may be ſaid of *England*, *France*, and thoſe Kingdoms in *Spain*, that were inſtituted by the *Goths* and *Vandals*, the *Francs* and *Saxons*, after the ancient *Gothic* Model of Government. And though I grant this ſort of mix'd Monarchy is not to be reduced to any of the three diſtinct Kinds of Government laid down by *Ariſtotle*, yet are they not for all that to be condemned; but rather the more approved of, ſince by this Mixture they were capable of divers Benefits, and free from ſeveral Miſchiefs, which are incident to any of thoſe Forms of Monarchy, Ariſtocracy, or Democracy, when exerciſed purely and without any ſuch Mixture: And that this, as to *England* itſelf, is no Invention of the Commonwealth-Men, (as you call them) you may read King *Charles* the Firſt's Anſwer to the 19 Propoſitions ſent him by the Parliament, for the Words are remarkable: *This Kingdom*, ſays he, *is mix'd of Monarchical, Ariſtocratical, and Democratical Government; and that ſo wiſely, that we have all the Conveniencies, and none of the Inconveniencies of any of thoſe Forms taken ſingle.* Pag. 96.

Nor doth this at all derogate from the Nature of the Monarchy, nor make any Diviſion between the neceſſary Functions of Sovereign Power: For I have already granted, that the Executive or Gubernative Part is wholly in him, as alſo the Power of making War and Peace. And as for the Legiſlative, as long as the King hath a Negative Vote in all Laws that paſs, and that they cannot be made without his Royal Sanction, the Legiſlative Power is not divided, as I have already proved.

But as for your other Argument againſt a Prince's being limited by the Original Conſtitution of Government, though as I yield it is more ſubtile, ſo it is alſo more ſophiſtical and fallacious than the former. For your *Dilemma*, by which you would prove the Abſurdity of that Notion, will not do; becauſe a Prince, at the Inſtitution of the Government, may be limited by thoſe who are neither ſuperior, nor inferior to himſelf; but only equal in the State of Nature, as I ſuppoſe the People to be with the King before he was made ſo by them: And that Equals may thus limit each other, you yourſelf will not (I ſuppoſe) deny in the Caſe of Princes, who are Equals in the State of Nature: As Queen *Mary* (for Example) made ſuch Conditions with King *Philip* of *Spain*, before ſhe married him, that if he offered to meddle with the Government of this Kingdom without her Conſent, it would be lawful for her to part herſelf from him, and to ſend him Home into his own Kingdom: And might ſhe not with a ſafe Conſcience have done ſo upon the Breach of the Conditions on his ſide? Apply this to the People in the State of Nature, and the Perſon they are about to make King before the Politick Marriage of a Coronation or Admiſſion to the Crown, and ſee if they do not agree; or whether the People can be blam'd, if they repudiate their Politick Husband for invading that part of the Government which they had reſerved to

themſelves? Nor doth this argue any more Superiority in the People over the King in the State of Nature, than it doth for a Creditor, in the like State, to compel by Force his Debtor to pay him a Sum of Money which he owed him, in caſe there were no Civil Juriſdiction for him to appeal to. And let us farther ſuppoſe a Council or Parliament appointed, who may remonſtrate to the King his Tranſgreſſions or Violations of the Law: Yet this may be without any Coercive Power over his Perſon, or of making War upon him; ſince the King may, if he pleaſe, remedy all theſe Diſorders, by redreſſing their Grievances, and puniſhing the Authors of them: So if he will wilfully perſiſt in ſuch Violations as ſtrike at the Fundamental Conſtitution of the Government, and do alſo go about to execute them upon the People by Force, this being in effect a making War upon them; I ſuppoſe they have then a juſt Right to defend themſelves againſt his Tyranny. So that if theſe Rights or Privileges we now enjoy, were not the meer Conceſſions of the King's Grace and Favour, as you affirm, but reſerved as part of their Birth-right at the Original Conſtitution of the Government, (as I ſhall prove all our Fundamental Laws were) the People have then as much Right to defend them (their Allegiance to him being upon that Condition, either expreſs'd or imply'd) as any other Nation hath to defend their Lives, Liberties and Properties, againſt the Violence of the Supreme Powers, or any commiſſioned by them, as I hope I have already proved to you: So that notwithſtanding all that you have ſaid to the contrary, I think the Notion of a Mix'd or Limited Monarchy in the very Inſtitution, may be agreeable to Reaſon, and practicable too either in this or any other Kingdom: And when you can prove the contrary by Hiſtory, or Matter of Fact, as you promiſe, I will give up the Cauſe.

M. You have broached a parcel of ſpecial Commonwealth Notions, in which you are every way out: As firſt, in making the King's Authority derived either from, or by, the People's Conſent: Whereas all our ancient Lawyers call him God's Vicar, or Lieutenant on Earth, and not the People's: And in the next place, in ſuppoſing he may be reſiſted by Force of Arms, whenever the People ſhall think themſelves oppreſs'd, or their Fundamental Rights and Liberties (as you call them) invaded; it is contrary to the expreſs Declaration of the Parliament, by two ſeveral Statutes in the 2d Year of the late King *Charles*: And tho' you diſclaim all Coercive Power of the Two Houſes over the King, yet it is only to place this Right of Reſiſtance in a more fallible and ungovernable Body, *viz.* the whole People in their natural Capacities; which as it is more conſiſtent with your Principles, ſo it is more dangerous to all Supreme Powers, as well Commonwealths as Monarchies, as I have partly ſhewed you already; and, I hope, may farther convince you before I have done. But ſince I have not now time to ſhew you the Falſity and Abſurdity of theſe Notions, and to urge the Statute at large againſt Reſiſtance *in any Caſe whatſoever*; I pray go on in the Method you have propoſed, and let me ſee how you can make out, that even our Parliaments do not derive that Privilege they now enjoy of giving their Conſent to Laws, as alſo their very Being, to the gracious Conceſſions of our former Monarchs.

F. That I ſhall do with all my Heart: But firſt let me tell you, that though I own the King to be God's Lieutenant in theſe his Dominions; yet I muſt likewiſe aver, that it was only by the Conſent and voluntary Submiſſion of the People of this Nation, that the firſt Monarch (begin where you will) could obtain that Title. And as for thoſe Statutes you mention againſt all Reſiſtance *in any Caſe whatſoever*, I doubt not but to ſhew you, that it was never the Intent of that Parliament to debar us from all neceſſary Reſiſtance and Self-defence, in Caſes of illegal Violence, and intollerable Oppreſſion; unleſs you can ſuppoſe they were reſolved to alter the Government, and to put it into the King's Power to deſtroy all our Laws and Liberties; and inſtead of a lawful King, to ſet up for a lawleſs Tyrant whenever he pleaſed.

But to come to the Matter in hand, I ſhall ſhew you, that it is not at all im-
H.T.M. l. 3. poſſible or improbable, that without any Hinderance of that Power which is neceſ-

ſary

ſary to the King as Supreme, that he might for all that have been limited as to the Legiſlative at the firſt Inſtitution of the Government, which I ſhall thus make out.

I do therefore in the firſt place ſuppoſe, that the *Engliſh Saxons* being a free People, after their Conqueſt of this Iſland, as well Nobles as Commons, did agree by their free Conſents, and publick Compacts, to ſet over themſelves a *Prince* or *Sovereign*, and to reſign up themſelves to him, to be governed by ſuch and ſuch Fundamental Laws. Here is a Supremacy of Power ſet up, tho' limited as to the manner of its Exerciſe.

2. Then becauſe in all Governments after Caſes will ariſe, requiring an Addition of Laws, ſuppoſe them *covenanting* with their *Sovereign*, that if there be any Cauſe to conſtitute any *new Laws*, he ſhall not by his ſole Power perform that Work; but that they will reſerve in themſelves a *concurrent* or *co-operative Power*: So that they will be bound by no Laws, but what they join with him in the making of.

3. I ſuppoſe, that tho' the Nobles may perſonally convene; yet ſince the Commons being ſo numerous, cannot meet together in Perſon; therefore, for the doing of this Work, it be agreed, that every City or conſiderable Town ſhould have Power to depute one, or more, to act for the whole Body in the Legiſlature. That the Nobles by themſelves in Perſon, and the Commons by their Deputies aſſembling there, may be repreſentatively the *whole Body* of the Kingdom, with Power to execute that Authority reſerved for eſtabliſhing new Laws.

4. Since the occaſion, and need of making ſuch Laws, and expounding the old ones, could not be conſtant and perpetual; therefore we may farther ſuppoſe, for the avoiding of the Inconvenience of three ſtanding *co-ordinate Powers*, they did not eſtabliſh theſe *Eſtates* to be conſtantly exiſtent, but occaſionally, as the Cauſes for which they were ordained ſhould require.

5. Becauſe a Monarchy was intended, and therefore a Supremacy of Power (as far as was neceſſary) muſt be reſerved in one, it was concluded, that theſe Eſtates ſhould be ſtill *Aſſemblies of his Subjects*, and ſwearing Allegiance to him; and that all *new Laws*, which by Agreement of theſe Powers ſhould be enacted, ſhould run in his *Name*, and be called his *Laws*, and they all bound to *obey* him in them, when thus eſtabliſh'd.

6. And laſtly, it being ſuppoſed, that he who thus was to govern by Law, and for the *Furtherance* of whoſe Government ſuch *new Laws* were to be *made*, ſhould beſt underſtand when there was need of them; and that the convening and diſſolving of the Aſſembly of the *Eſtates*, was a *Power* of great *Truſt*; it was put into the Prince's Hands, by Writ to *Convocate*, as alſo to *Prorogue* or *Diſſolve* ſuch Meetings. But in proceſs of Time, ſome Princes, not caring much to have their Government look'd into, or to have any Power in being but their own, taking Advantage of this Power of aſſembling theſe Eſtates, did, more ſeldom than need required, make uſe of it: Whereupon Proviſion was made, and a Time ſet by *new Statutes*, within which an Aſſembly of Parliament was to be held. Now when you have made theſe true Suppoſitions in your Mind, you have the very Model and Hiſtory of this Monarchy; and we ſhall eaſily find what to anſwer to the Arguments before produced on either ſide. For firſt, it is his Parliament; becauſe an *Aſſembly* of his Subjects convocated by his Writ to be his Council, and to aſſiſt him in making Laws for him to govern by; yet not his, as other Courts are, as deriving their whole Authority from the King. So likewiſe his Power of aſſembling and diſſolving them, proves him thus far above them; becauſe, though as to the Time of their Meeting, it depends on him; yet their Power and Authority, *quoad Specificationem*, i. e. the Being, Kind, and Exerciſe of it, is from the Original Conſtitution. For as to that, they expect no Commiſſion and Authority from him, but only to their Meeting, to proceed

to act; but when met, they act according to the Original Rights of their Conſtitution; and thoſe Acts proceed from their conjunct Authority with, not from their Subordination to the King in the Legiſlative; as alſo in laying of Taxes, *&c.* on the People.

The *Oath of Allegiance* indeed binds them, as his Subjects, to obey him, governing according to eſtabliſh'd Laws: But yet it ſuppoſes them to be built upon the Foundations of his legal Government, and muſt not be interpreted to undermine and deſtroy it. He is hereby acknowledged to be Supreme, ſo far as to rule them by Laws already made, or to be made, but not without them. So that this is no Derogation to the Legiſlative Power of Parliament: And I believe of theſe things no unprejudic'd Man can make any queſtion. And herein conſiſts the accurate Judgment of the *Contrivers* of this Form, that they have given ſo much into the Hands of the *Sovereign*, as to make him a Monarch; yet have reſerved ſo much in the Hands of the *People*, as to enable them to preſerve their *Laws* and *Liberties*.

M. I confeſs you have given a long and plauſible Account of the Original and Form of our Government, though if it come to be examined, I doubt it will prove a *meer Romance*, and not at all agreeable to true Hiſtory, or Matter of Fact: Since if we look to the *eldeſt Times*, either after the *Saxon* or *Norman* Conqueſts, we ſhall find the Power of our Kings to have been ſtill more abſolute than they are now. And I think I could eaſily trace the Steps by which the People have attained to all the Power and Privileges they now enjoy; which, as I do not grudge the Nobility and People of this Nation, yet they ought to exerciſe it with a due *Reſpect* and *Subordination* to that *Power* from which they were all at firſt derived; leſt if they ſhould aſcribe them to themſelves, the King ſhould be tempted to deſtroy thoſe *great Privileges*, and taking away the very Being of Parliaments, to make Laws without them.

But to ſhew you farther, that this Notion of an independant Power in the *two Houſes* by the *Original Conſtitution* of the Government, is altogether inconſiſtent with the King's Prerogative, appears from clear Matter of Fact, even as you yourſelf have put it. For when Kings thought fit not to have their Power controuled, you acknowledge they called Parliaments leſs frequently than uſual; and that thereupon there were divers Laws made, appointing certain times for their Meeting; from whence it appears, that before this the times of their Meeting were wholly left to his Diſcretion. Nay farther, that the King's Prerogative of aſſembling them, or omitting it when he pleaſes, cannot be limited by any Act himſelf can make, appears from hence, that notwithſtanding all thoſe Laws that have been made for Annual and Triennial Parliaments, our Kings have never thought themſelves obliged to call Parliaments oftner than they ſaw their own Occaſions, or the Neceſſities of the People (which they themſelves were ſole Judges of) required. Nor did any Parliaments ever find Fault with this, 'till that *rebellious one* in 1641, which had the Confidence to preſent to the King a Bill to be paſs'd, whereby it was not only enacted, that there ſhould be a Parliament every third Year; but that upon the King's omitting to iſſue forth Writs of Summons, the Sheriffs, nay Conſtables might ſummon the Freeholders, and proceed to Election; and that the Lords might alſo meet without any Writs from the King; which was quite contrary to the Original Conſtitution, by which (as you yourſelf grant) there could be no Parliaments without his Summons; he being *Principium, Caput & Finis Parliamenti*. And if ſo, it ſeems wholly improbable, nay impoſſible to me, that your *Two Houſes* ſhould have, by the *Original Conſtitution*, any Power of meeting or doing any thing without his Majeſty's Conſent and Allowance: And we know that at this Day, the *Speaker*, in the Name of the *Houſe of Commons*, deſires of the King, *Liberty of Speech*. And King *Henry* VIII. and Queen *Elizabeth* did ſometimes rebuke the *Houſe of Commons*, and ſent to them to *deſiſt*, when they were about to paſs any Bill they did not approve of, or to meddle with thoſe things which did not belong to them: Which plainly declares, that (contrary to your Aſſertion) neither of the *Two Houſes* have any Power to proceed upon any Buſineſs, or to paſs any Bill which the King

King disapproves of. And though I grant that they do not ask the King's Leave for the bringing in, or passing of all Bills whatsoever in either House; or that the King can command them to give him what Money, or pass what Bills he pleases; yet this Privilege must needs proceed from his Grant or Concession: Whereby, though he hath discharged them from an active Obedience to such Commands, yet hath he not thereby divested himself of any of the essential Rights of Sovereignty, or at all discharged them from a Passive Obedience, or Submission to his Power, supposing the worst that can happen, that he should take away what share he pleased of the Subjects Estates without their Consent; or make his own Edicts and Proclamations to be observed for Laws: Since the King's Authority is prior to all others, and that (as the Statutes of *Edward* VI. and Queen *Elizabeth*, which I have already quoted, expresly declare,) *All Power, Authority and Jurisdiction, Spiritual and Temporal, is derived wholly from the King:* So that unless your Legislative Power of Parliament be somewhat, that is, neither an *Authority* nor a *Jurisdiction*, it is by this very Body acknowledged to be wholly derived from him: Nor have you yet answered this Argument, nor I believe can you do it.

F. As for your History which you promise to give me, of the absolute Power of our first *Saxon* and *Norman* Kings, I desire you to defer the speaking of it 'till another time, it being now late: Yet I do not doubt but to prove, that what I assert concerning the *limited Power* of our Kings, even by the Original Constitution of the Government, is no Romance, but true History. Nor are the Reasons that you have now urged to the contrary prevalent enough with me to alter my Opinion: For I think I am able to prove somewhat more than I but now asserted, *viz.* that the *Wittena Gemote*, or *Great Council*, met constantly once a Year, or oftner, when Occasion was, under the *Saxon* Kings, without any Summons from them; as when we come to the particular History of this Matter, I shall shew you more at large. And also, that for the first hundred Years, after the Coming in of the *Normans*, the Great Council, or Parliament, used to meet of course at the King's Court, at two or three of the great Feasts of the Year, without any other Notice by Writ or Summons. The first mention we find of such Writs, being in King *John's Magna Charta*: But that when these Assemblies became less frequent, by reason of the King's discontinuing of them; and because of the Ease the Nobility and People found, in being discharged from so constant and chargeable an Attendance, they came to be so discontinued at last, that, as you yourself confess, there were fain to be expres Laws made for their more frequent Meetings: And though the Power of summoning them, was still left wholly in the King; and that he did very often dispense with the Calling them, according to the intent of those Statutes; yet doth not this prove any legal Prerogative in him so to do; but that it was a high Breach of Trust, and also of his Coronation Oath, when he thus omitted to call them: Since our Kings were formerly sworn to keep, and observe those Laws, *quas vulgus elegerit*, which the People either have, or should chuse, construe it which way you will; though I own in *French* it is in the *Preterit*, *auera eleu, should have chosen.* And as it is an old Maxim *a Facto ad Jus non valet consequentia*, so it is no true way of Proof, to argue from an illegal Exercise, or Abuse of Power, to a legal Right of Prerogative. And though the Parliament might not always actually question, or find Fault with their Kings for thus neglecting to call them; because, perhaps the Publick sustained no present Damage from it; and that they thereby escaped the giving the King those Taxes and Aids which he usually demanded of them at such times: Yet when the long Forbearance or Omissions of Parliaments became a general Grievance, by reason of those Encroachments that the King and great Men often made upon the People's Liberties in those Intervals; and that the King look'd upon it as a piece of his Prerogative to abuse this Trust as far as he pleased: Then (and not 'till then) there was need of a Law, that there should be a Parliament every Year; and that in case of any Failure of Summons on the King's part, the People might proceed to Election without it, which was not so properly a new Law, as the Restoration of the old Constitution; since anciently the People met the

Rot. Claus. 1. E. 2. *m.* 10. *pars Unica.*

King

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King at these *great Councils*, at such set Times of the Year, as I shall prove, when we come to the History of Matter of Fact, which I am not at all afraid to be judged by. And then also, I shall shew you, that tho' the King is now *Principium, Caput & Finis Parliamenti*, (that is, the Parliament properly so called) yet that the great Council, or Assembly of the Estates, had, from the first Institution of the Government, a Power of assembling themselves, in cases of Necessity, such as are doubtful or disputed Titles to the Crown, or the Absence of the Successor; and then they have often met by their own inherent Authority; and have either settled the Succession of the Crown, as they thought good; or else have recognized an *Hereditary Right* in the Absence of the Heir; as when King *Edward* the first was in his return from the Holy Land: Or else to depose the King's Justiciary, when he abused his Power, as in the Case of *William Longchamp*, Bishop of *Ely*, who was left Vice-Roy by King *Richard* the first, when he went into the Holy Land.

Vid. Walsingham & Mat. Westminst. *in the beginning of this King's Reign.*

Vid. Hen. of Hunt. *and* Ro. Hoveden.

And though I own that some high-spirited, and yet well-beloved Princes, might take upon them a Power of *rebuking* the *House of Commons* when they meddled with Business they did not like: Yet this Submission proceeded from the great Reverence they had for their Persons, and Confidence they placed in their Government. Since we find only those Princes that were wise and successful in their Government, and so became the Darlings of their People, such as Queen *Elizabeth* and King *Edward* the Third, (for as for King *Henry* the Eighth, I remember no Instance of it) who durst venture to act thus. As for the desire of *Freedom of Speech*, it is but a Compliment; for how can the Grievances of the Kingdom be redressed without speaking freely of them? And if one great End of Parliament was to redress these Grievances, it were altogether in vain for them to attempt any thing in this kind, if the King could Browbeat them from it, whenever he pleased. But *Bracton* doth not only tell us, *Rex habet Superiorem, Legem, & Curiam suam Baronum, &c.* in the place I have already cited: But the old Book, called *The Mirrour of Justices*, also teaches us the same Lesson in his second Section, where, speaking of the King's Power, he tells us, *That though the King can have no Peer in the Land, yet nevertheless, if by his own Wrong he offends against any of his People, none of those that judge for him can be both Judge and Party.* It is therefore agreeable to Right, that the King should have Companions to hear and determine in Parliament, all Writs and Complaints concerning the Wrongs of the King, Queen, and their Children; and of them especially whose Wrongs could not otherwise have common Right. These Companions are therefore called *Counts*, after the *Latin Comites, &c.* Nor can I think that any King would have erected a Court to have redressed the Wrongs done by himself, or his Family, whether he would or not. But as for your main Argument, from the Words of the Statutes of King *Edward* VI. and Queen *Elizabeth*, *That all Authority and Jurisdiction, as well Spiritual as Temporal, is derived from the King*; I do own it true; that is, if meant of all *derivative Authority*, such as that of all inferior Courts, as well Civil as Ecclesiastical. For I suppose you yourself will not affirm, that the Ecclesiastical Authority of Bishops, as to their Right of meeting in publick Synods or Councils, is derived from the Crown. But the Truth is, the Sense of this Statute is no more, than that all such Jurisdiction is immediately derived from the King, though originally from the People, (which *Fortescue* calls *Potestatem a Populo effluxiam*), and by them intrusted with him, as the Supreme Magistrate, to distribute it to all inferior Courts, which yet he cannot at this Day create anew without an Act of Parliament: So that this will not extend to the whole Assembly of the Estates themselves; since I doubt not but to prove, by undeniable Testimony, that that *Constitution* is as antient as the *English* Nation itself.

M. I see you have a mind to wrest the true Sense of this Statute by a forced Interpretation; but I hope at our next Meeting to prove to you, that our first *Saxon* and *Norman* Kings were *absolute Monarchs*; and that not only all the Liberties and Privileges we enjoy, but also our Civil Properties were wholly derived from them: And if so, it will also necessarily follow, that all Difference and Distinc-

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Diſtinction in Honour or Power, by which the Biſhops and Temporal Lords can claim to ſit in Parliament, is wholly derived from thoſe Kings. For as to the Commons, I need not go ſo high for their Original; ſince it is the Opinion of our beſt Antiquaries; and I think the learned Dr. *Brady* hath ſufficiently proved it againſt Mr. *Petyt*, that they are *no antienter* than the latter End of *Henry* the Third's, or perhaps the 18th of *Edward* the Firſt's Reign. Nor do the Authors you have quoted for the independant Authority of Parliaments, (*viz. Bracton* and the *Mirrour*) mention any other than the *Curia Baronum*, or that of Earls and Barons, as the Author of the *Mirrour* hath worded it; by which can be meant no other than the Houſe of Lords: For as to that of the *Commons*, had they been then in being, or had they had any thing to do in the Government, it is not likely theſe antient Authors, as well as our Acts of Parliament of thoſe Times, would have omitted particularly to mention them. So that the higher I go, and the more I look on the Hiſtory of our antient *Engliſh* Kings, the more abſolute I find their Power, and the leſs dependant upon the People. Therefore I have very great reaſon to believe, that our firſt Kings were abſolute Monarchs, not only by the Original Conſtitution of Parliaments, but alſo that our very Liberties and Properties proceeded at firſt from their meer Grace and Favour.

F. I know you have aſſerted the ſame things more than once: All the Difficulty lies in the Proof. And therefore I would not have you be too poſitive, or rely too much upon the Conciſeneſs or Silence of the antient monkiſh Writers of thoſe firſt Times. For ſince, as I own, they have never given us any exact Account of our antient Civil Government, nor yet of the Hiſtory of their own Times; we are forced, for the moſt part, to pick out the Truth from other Circumſtances, or ſuch Paſſages as we can meet withal in antient Laws and Cuſtoms; nay, ſometimes from thoſe of their Neighbours, who lived under the ſame kind of Government and Laws with our *Saxon* Anceſtors, as proceeding from one common Stock or Original; as I ſhall ſhew you before we have done. But ſince we are already in Poſſeſſion of our antient Laws and Liberties, and of a Right to Parliaments once every Year, or oftner if need be, by two antient Statutes yet in force, at fartheſt once every three Years, by a late Act of Parliament, it ought to be your Task to prove to me the abſolute Power of our firſt *Engliſh* Monarchs; and by what Steps and Degrees they came to part with their Power, and to be thus limited as we now find them; and when you can ſhew me this, I do aſſure you I will come over to your Opinion.

M. I ſhall obſerve the Method you preſcribe. And therefore, to begin with the firſt Entrance of the *Engliſh Saxons* into this Iſland; I ſuppoſe you are not ignorant of ſo common a Piece of Hiſtory, that all the Title they had to this Iſland was by the *Sword* or *Conqueſt* of their firſt Princes or Generals, who being ſent by *Lot*, together with the Armies that followed them out of their own Country, becauſe it was too barrow or barren to ſuſtain ſuch great Multitudes, they came over hither to ſeek new Dwellings. Now whether theſe Princes were made Kings before they came over, or that they made themſelves ſo immediately after their Conqueſt, will be all one; ſince if we conſider them as Military Captains or Leaders of Armies, their Power was abſolute, as that of all Generals ever was, and muſt be by the neceſſary Laws of Military Diſcipline. If we look upon them as Kings or Princes (as it is very likely they were alſo before they came over) ſince they were certainly of the *Blood Royal*; all of them deriving their Pedegree from *Woden* their God, as well as firſt King; and being appointed Kings by their Fathers, or other near Relations, over thoſe Parties or Colonies they were to lead out and command, there is no Ground to believe they owed their Titles to the Votes or Suffrages of their Followers. But after they had ſettled a Heptarchy, or Seven Kingdoms, in this part of *Britain* called *England*, we find them governing, and leading their People like abſolute Kings and Monarchs over their little Principalities: And ſince each Kingdom was conquered from the *Britains* under their Conduct, according to the

Laws

Laws of Nations, and Right of Conqueſt, all the Lands of each Kingdom belonged to the Conquerors; who, though they cantoned them out into Shares to their Captains and Soldiers, according to each Man's Valour or Deſert, yet did this wholly proceed from their Bounty and Favour, who might have kept the Whole to themſelves, if they had pleaſed. And hence it is, that not only ſince the *Norman* Conqueſt, but alſo long before, all the Lands of *England* were holden of the King, as the Supreme Lord: And if ſo, I ſuppoſe you will not deny, but that according to your own Principle, all our other Privileges and Liberties muſt have been derived from him; ſince you have already aſſerted, that whoever is *Lord* of the *Soil* of a Country, he is ſo alſo over the *Perſons* of the *People*.

F. Before you proceed any farther, I pray give me leave to anſwer what you have now ſaid, I doubt with greater Shew and Appearance of Truth, than the Matter will juſtly bear when well canvaſſed. But ſince I grant our earlieſt Writers are very ſhort, in giving us the true Form, or Original Conſtitutions of our antient *Saxon* Government, it is neceſſary we look into the *Roman* Authors, who treat of the Laws and Cuſtoms of the antient *Gothic* Nations; a *Stirp* of whom the *Germans*, as well as our antient *Engliſh Saxons*, certainly were; and in thoſe Authors you will find, that they, as well as other Nations of the *Gothic* Original, were never governed by abſolute Monarchs; but by Kings or Princes, limited by the Laws and Common-Councils of their own Nations; as were all thoſe that deſcended from this *Gothic* Original.

Vide Grotii Prolegoma in Hiſtoriam Gothicam.

Cap. 4. In the firſt place therefore, ſee what *Tacitus* ſays, in his Book *De Moribus Germanorum*, who ſufficiently proves, that it was a fundamental Conſtitution of all the *German* Nations, to order all publick Affairs in General Councils or Aſſemblies of the whole People. Wherefore the ſame Author there tells us: *De minoribus rebus Principes conſultant, de majoribus Omnes; ita tamen, ut ea quoque, quorum penes Plebem arbitrium eſt, apud Principes prætractentur.* As alſo that in this Council they try'd great Offenders for Capital Crimes. *Licet apud Conſilium accuſare quoque & diſcrimen capitis intendere.* Nor was the Power and Right of their Kings Abſolute or Arbitrary, but Limited and Elective, as appears by theſe Paſſages in the ſame Author: *Reges ex Nobilitate, Duces ex virtute ſumunt. Nec Regibus infinita, aut libera poteſtas, &c.* And ſpeaking of the manner of their holding theſe publick Councils, after Silence commanded by the Prieſts: *Mox Rex* (ſaith he) *vel Princeps, prout ætas cuique, prout nobilitas, prout decus bellorum, prout facundia eſt, audiuntur, authoritate ſuadendi magis quam jubendi poteſtate. • Si diſplicuit ſententia, fremitu aſpernantur; ſin placuit, frameas concutiunt. Honoratiſſimum aſſenſus genus eſt armis laudari.* So that you may here ſee their Kings had no Negative Votes in their Councils, whatever they might have afterwards among the *Engliſh Saxons*; and that they did not ſo much as preſide in them, but the Prieſts, you may ſee in the ſame place: *Silentium per Sacerdotes, quibus tum coercendi jus eſt, imperatum.* And therefore it is altogether unlikely, that they ſhould have had that Abſolute Power, you fancy, over the Lives and Fortunes of the People; ſince you plainly ſee, that they could neither make Peace nor War, accuſe or condemn any Man, nor raiſe Taxes, without the Approbation or Conſent of thoſe Councils.

Id. cap. 12.
Cap. 7.
Cap. 11.
Pag. 634.

Now ſince all the *Engliſh Saxon* Nations were from *Germany*, I leave it to the Judgment of yourſelf, or any indifferent Perſon, to conſider, whether a People ſo free as this, who came over hither not as Subjects, but only as Volunteers under ſo many Captains or Generals, who went out meerly to ſeek new Habitations, ſhould be ſo fond of a Government they never knew at home, as to give theſe Captains (whom they made their Kings) an Abſolute Deſpotick Power over their Lives and Eſtates, which they never could endure in their own Country. But that they were not then Kings, I thus prove: Firſt of all, no antient Writer that I know of ever mentioned any ſuch thing, but rather the contrary; for who will believe, that before it could be known what the Succeſs would be, they ſhould make meer Soldiers of Fortune, or Leaders of ſome Bands of Adventurers, Kings, before the Country they were to govern was conquered, or that they knew whether

ther ever they ſhould arrive there or not? And as for the two firſt of theſe Princes that came over, *viz. Hengiſt* and *Horſa*, our Hiſtories make them Brothers with joint Command over thoſe *Saxons*, who were ſent hither as Auxiliaries to the *Britains*, againſt the *Picts*; nor is *Hengiſt* ever called King, or the Time of his Reign reckoned, till near eight Years after his coming over hither; *viz.* after the Death of *Vortimer*, and the driving of *Vortiger* into *Wales*: And therefore I can give no account how theſe Princes ſhould become Kings, but by the Conſent or Election of their Soldiers or Followers. For, as for themſelves to create themſelves Kings, without the Conſent of their Army or People, is altogether improbable and abſurd, and not at all to be relied on upon your bare Word; for other Authority you yet give me none. But for the main part of your Aſſertion, that the firſt *Saxon* Kings were Abſolute Monarchs, becauſe all the Land was conquered for them, and to their Uſe, and that all Land was held of them, is altogether as precarious, our Hiſtories being herein wholly ſilent. But tho' we do not certainly know which way they divided their Conqueſt to their Followers, ſince Authors mention nothing of it; yet this I think I may poſitively aſſert, that whatever was done in this kind by the firſt *Saxon* Kings, was not as abſolute Proprietors of the whole Country, but as publick Truſtees, for thoſe over whom they were ſent: For ſince (as I have already obſerved) theſe People were utterly Strangers to a Deſpotick Government at home, it is altogether unlikely, that their Followers ſhould confer upon them an Abſolute and Unlimited Power abroad, which they were never uſed to before: And therefore they could not be Kings by Right of Conqueſt over the Eſtates or Perſons of thoſe who were Fellow-Conquerors with them, and ſet them up for what they were; nor yet over the *Britains*, ſince they were either totally driven out into *Wales* or *Cornwall*, or elſe thoſe few that were left, being reduced to a State of Servitude, were by degrees incorporated with the *Saxons*.

Vid. Polychron. Rad. Higden. an. 456.

And tho', for want of Antient Hiſtories, as well as Letters, among ſo rude and barbarous a People as theſe were at firſt, we have no Records upon what expreſs Conditions theſe Captains were by them elected to be their Kings; yet thus much we may find out by thoſe few Remains we have left us in *Bede* and other antient Hiſtorians, that they had all of them the ſame kind of Government and Laws, with very little difference from each other: Since we find, in all the ſeveral Kingdoms of the Heptarchy, there were the ſame kind of *Wittena Gemots*, or Great Councils, by whom the Kings were elected, and without whoſe Advice and Conſent they could do nothing of moment, either in Peace or War, as any one that will but read thoſe Laws that are left us, collected by Mr. *Lambard* and Sir *H. Spelman*, in his *Saxon Councils*, may eaſily obſerve.

M. I own indeed, that our *Saxon* Anceſtors, when they had conquered this Kingdom, brought in their *Saxon* Laws along with them; but it doth not from thence follow, that they brought their Popular Government in with them too: And thoſe Aſſemblies *Tacitus* mentions, might be Councils of the *German* People in general, not of the *Saxons*, which Name is not to be found in all that Author. But what if it be granted, that thoſe People, which were afterwards called *Saxons*, were governed by ſuch Councils, was not this Government a Democracy? And the People ſo far from having a Share in theſe Councils, that they only had Voices in them. And if any had any more Power here than others, they were the Prieſts, who were a ſort of Chair-men in them, commanding Silence, and who had a coercive Power, as *Tacitus* ſays. In theſe Governments, no Man can doubt of the Suffrages of the People; but under ſuch as you mention, you would, I think, ſcarce be contented to live, where the Prieſts bear ſo much ſway; where there were no Cities or great Towns, but only ſcattered Houſes, and Habitations by Rivers, Fields, and Woods, made of Dirt or Clay, Arms of Trees and Stubble; where there was no Literature, eſpecially among the common People, nor ſcarce Civility; where there was no Cloathing, but with Garments made of Beaſts Skins; no Food, but Milk, Pulſe and Fleſh, without Art or Cookery; where there was no Propriety in Lands, no Money, no Work for Lawyers, as you will find, if you read *Tacitus*, and the 6th Book of *Caſar's Commentaries*.

B. A. P. p. 3

And as for what you say concerning the Beginning of the *Saxon* Kingdoms in this Island; to this I reply, that *Hengist* and *Horsa*, and those other Leaders, who brought the *Saxons* into *England*, were all of them of the Royal Line of the *Saxons*, as appears by all our Historians; and so if not Kings, yet well able to subsist. And it was not the manner of those Countries, to thrust out their Supernumeraries by force, but to draw them out regularly by Lot, at such a Rate and Proportion, and to give them Generals and Officers of great Birth and Degree.

B. P. P. §. 19, 20.

Mat. Westm. ad an. 449.

Nor is it probable, if they had made Articles with their Followers, that these Princes should have had such Absolute Authority, as they had, over the Lives and Fortunes of their Subjects, in the more early Times, almost all the Privileges of the *English* Nation being granted long since that time; nay, most of them since the Conquest; yea, since the *Barons* Wars. But as for what you say concerning the *Gothick* or *Vandal* Kingdoms, since they relate nothing to our Government, I need not say any thing to them; nor doth it follow, that if their Kings were limited, or but upon condition, that ours must be so too.

F. I see you would fain evade the Authority of *Tacitus*, concerning the People's having any share of the Government amongst the *Saxons*, because, forsooth, that Nation is not particularly nam'd in his History: But tho' the *Saxons* are not particularly nam'd by *Tacitus*, yet the *Angli* are there mentioned among those *German* Nations, who worship'd their common Goddess *Hertha*, which that Author interprets to be *Terra*, the Earth; and you very well know, that from these *Angli*, or *Angles*, the *English* Nation as well as Name is derived. But tho' *Tacitus*, who lived about the Beginning of the Emperor *Trajan*'s Reign, names not the *Saxons*; yet *Ptolomy*, who writ within 40 Years after, expresly mentions them, placing their Country not far North of the River *Albis*, and near the Place where all agree the *Angli* were seated; so that they were either all one and the same Nation, or very little different. But *Ethelwd Quæstor*, one of our antientest *English Saxon* Historians, in his first Book, makes this Nation of the *Saxons* of a far wider Extent, and that it reach'd from the River *Rhine* all along the Sea-Coast up to *Donia*, now called *Denmark*.

Vid. Verstegan. Restitution of decayed Intelligence, p. 23.

Tacit. de Mor. Germ.

Vid. Ptol. in Tab. 4. Europ.

But since I see you cannot well tell how to evade this Testimony of *Tacitus*, but by affirming, that the Government in *Germany* was a *Democracy*; and, that the People had the only Sway in it, is a great Mistake, since he expresly mentions their Kings and Princes, and there only speaks of the manner of transacting all publick Affairs, in which, it is true, the People (as it is very well known by our antient Histories) had formerly a greater Share than now; yet doth he not thereby exclude their Princes and Nobility from having also their Shares in it. And as for what follows in *Tacitus*, of the Royal Power, *auctoritate suadendi, magis quam jubendi potestate*; I suppose you cannot deny, but that Privilege yet remains to us, since the King cannot command the Parliament to make what Laws, or give him what Money he pleaseth: And therefore that doth not make it a *Democracy*, much less the Priests presiding in their Assemblies, which is no more to be wonder'd at, than that the Bishops have still Votes, and their Share of Legislature in the House of Peers; or that a Bishop, when Chancellor or Keeper, should be Speaker in the House of Peers. Or supposing that their Priests had more Power among them, than the Christian Clergy had after they were converted, doth it therefore follow, that it was not the same Government, or that it must therefore be so intolerable, that I would not have been willing to have lived under it? Since, I must tell you, I am not against Civil Offices, though exercised by *Clergy-men*, as far as the Business of their Function, and the Canons of the Church will permit. As for the rest which you object concerning the barbarous living of the antient *Germans*, it either makes nothing to the matter in hand, or else against you; since it proves plainly, that Absolute Monarchy was not the first Government among all Nations, as you suppose. Nor doth it therefore follow, that because these People were rude and barbarous, therefore they had not the Wit to prefer Absolute Monarchy before

fore all other Governments, ſince the *Romans* (who ſure were a civiliz'd People) did likewiſe as much abhor it.

But as for what you ſay againſt *Hengiſt*, and thoſe other Leaders, who brought the *Saxons* into *Britain*, being elected Kings by their Followers, is nothing but meer Gueſs and Conjecture. For that they were not Kings at home, you your ſelf grant; and whether they were able well to ſubſiſt at home, or not, is nothing to the purpoſe. It is plain they thought they could mend their Condition, or elſe would never have left their Country. And tho' it be granted, that *Hengiſt*, with his Followers, came not over as Enemies, but Auxiliaries to the *Britains*; yet it is not therefore more likely, that they were choſen by the King of their own Nation, than that their own Followers ſhould afterwards elect them, eſpecially when the one is agreeable to our own Hiſtorians, and the other not: For *Matthew Florilegus* tells us, that *Horſus* being ſlain, the *Saxons Fratrem ſuum Hengiſtum in regnum Cantiæ ſublimaverunt*; that is, they elected or advanced him to be King, if I underſtand any thing by that Word: And this agrees with the *Polichronicon* of *Ranulph Higden*, who places the Beginning of *Hengiſt*'s Reign immediately after the Death of his Brother *Horſus*, *viz. Anno Dom.* 465. eight Years after the coming of the *Saxons* into *Britain*. And that the reſt of the *Saxons*, who came hither after, had no better Title than Election, I could farther prove, if the Time would give me leave: For they that will read the antient Accounts of the *Saxon* Nation, and what Government they had among them, long after the Time of *Cæſar* and *Tacitus*, will find that it was impoſſible that they ſhould be thus created Kings before they came over; ſince at that time they had no ſuch things as conſtant Kings amongſt them: For in thoſe Times it was rather an *Ariſtocracy* than a *Monarchy*, as *Johannes Pomarius* in his *Saxon* Chronicle ſheweth us, for which I refer you to *Verſtegan*, where this Paſſage is made uſe of at large. *Verſtegan*, p. 68. So that if this were the Government of the *Saxons* as low as the Time of *Charles the Great*, I durſt leave it to any indifferent Perſon to judge, whether the firſt *Saxon* Kings in this Iſland were made ſo by their own Princes before they came over, or were choſen by their Followers; ſince no Hiſtorians mention the former, tho' all of them agree of the latter: They commonly uſing this Phraſe, *Regem fecerunt*, or *elegerunt*. And that all the firſt Kings of the *Heptarchy* were Elective, nothing is more plain; ſince the Great Council of the Nobility and People did not only elect them, but often depoſe them too, when they grew intolerable, through Tyranny or Miſgovernment; as may appear by the Example of *Sigibert*, King of the *Weſt-Saxons*, and divers others I could inſtance in, who were expelled this Kingdom (as *Brompton* and other antient Chronicles tell us) by the unanimous Conſent and Deliberation of the Nobility and People. Many like Inſtances I could give you in the other Kingdoms of the Heptarchy, but that it would be too tedious.

Vid. Earl of *Stamford*'s Speech at the General Quarter Seſſions at *Leiceſter*, 1690. and the Notes thereupon. *Vide* Brompton. *Chron. col.* 770. *Chron. de Mailros*, *f.* 137.

Nor doth your Reaſon ſignify any thing, that it is not probable that the firſt Princes were made Kings upon condition, becauſe of the abſolute Authority they had over the Lives and Fortunes of their Subjects, ſince it is altogether falſe in Matter of Fact; none of the *Saxon* Kings being able alone to make Laws, or impoſe Taxes upon their People, without their Conſents in their Great Councils, much leſs to make War without it: For then the War, though begun by the King alone, muſt have ſignified little in an Age, when there were no Standing Armies, nor Money in the Prince's Power to pay them, there being then but little Coin of any ſort, and their Revenues being moſtly paid in Victuals.

M. Pray, Sir, give me leave to interrupt you a little. I own indeed, that the particular Laws and Conſtitutions of each of the Kingdoms of the *Heptarchy* are not particularly known; and perhaps ſome of their Kings might be Elective, and conſequently liable to be depoſed by their People, whether by Right or Wrong, I will not now diſpute: But if we conſider the State

of things, after these seven Kingdoms became reduced into one, you will find them much altered; and as *Egbert*, our first *Saxon* Monarch, reduced all those Kingdoms into one, so it is to be supposed, that having no Right to them but by Conquest, and the Submission of their Kings, when overcome in Battle, both he and his Successors must needs have become far more absolute than they were before; and if they were Elective before that time, did now certainly become Hereditary Monarchs, the Crown descending from Father to Son for divers Descents: And so consequently these Princes granted divers Privileges and Liberties to the People of those Kingdoms they conquered. And that they were no other than the free Grants or Concessions of our former Kings, upon Petition or Request of the People, and accepted by the Clergy, Nobility, and People of the Kingdom, in their Great Councils. For this I need go no farther than the *Coronation Oath* taken by the Kings of *England*, when the Archbishop of *Canterbury* asks the King: *Sir, will you grant and keep, and by your Oath confirm to the People of* England, *the Laws and Customs granted to them by the antient Kings of* England *your Predecessors; and namely, the Laws and Customs and Liberties granted to the Clergy and People by the Glorious King* Edward *your Predecessor?*

From whence we may observe, that all the Bishops, Earls, Barons, and People there present, do own and confess, that their most antient Laws, Customs, and Liberties, were granted to them by *Edward the Confessor*, and other antient Kings.

F. I doubt you will prove as much out in the Account you give me of our Kings Power, after the seven Kingdoms were reduced into one, as you were before. For though I grant, that the Title of the *West-Saxon* Kings over all the rest proceeded from Conquest, and the Submission of the Kings and People they conquered; yet were they not all actually reduced into one Kingdom or Monarchy till a good while after; the Kings of *Mercia*, and of the *East Angles*, continuing in being till the coming in of the *Danes*, as you will find by our *Saxon* Annals. And though 'tis true, the *West-Saxon* Kings made those Princes tributary to them; yet that they did not become more absolute thereby, appears from the Testimony of our antient Histories; since we find them transacting all Affairs in their *Wittena Gemots*, or Great Councils, as well after their Conquest, as they did before. And therefore we find, in an old Register of St. *Leonard's* Abby in *York* (cited in the *Monasticon Anglicanum*, put out by Mr. *Dugdale*) this memorable Passage: *Memorandum quod anno Domini* 800, Egbertus, *Rex totius Britanniæ, in Parliamento apud Wintoniam mutavit nomen Regni (de consensu Populi sui) & jussit illud de cætero vocari Angliam.* And *Will. of Malmsbury*, that antient and exact Historian, says expresly of this King *Egbert*, Lib. 11. *Has omnes Regnorum varietates* Egbertus *animi magnitudine compescuit, & ea uni quadrans Imperio ad uniforme Dominium, servans unituique propria Leges, vocavit* Angliam. It is therefore most evident, that upon the Submission of those Kingdoms he conquered, he promised and agreed to govern them according to their antient Laws; and hence we find the *Mercian* Laws called *Merchen Lage*, to have continued in force long after that Kingdom was united to that of the *West-Saxons*.

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Ch. 6.

Nor will your Inference from the Coronation-Oath prove of any greater moment: For tho' it be therein recited, that divers of the Laws, Liberties, &c. we now enjoy, were granted by King *Edward the Confessor*, and other Kings; yet must it not be so understood, as if the People of *England* had no Laws or Civil Rights before his Time; for that were to contradict plain Matter of Fact, and the Histories themselves I have already cited. But why they were called *his Laws*, and *his Customs*, *William of Malmsbury* hath very well observed, when speaking of the good Laws made by antient Kings, and especially by King *Ethelred*, which were confirm'd by King *Cnute*, he hath this remarkable Passage: *In quarum custodiam etiam tunc temporis bonarum, sub nomine Regis* Edwardi *juratur, non quod ille statuerit, sed quod observaverit.* The

like

like I may ſay for the Laws of divers other *Saxon* Kings; which though they go under their Names, yet were made by the Aſſent of the Great Council of the Kingdom, as by the Titles of the Laws themſelves in Mr. *Lambard*'s and Sir *H. Spelman*'s Collection of them, you may be ſatisfied if you pleaſe.

But for a taſte, pray ſee the Laws of King *Alfred*; which, though ſaid to be made by him (as indeed it is true, he compiled them out of divers other Laws, formerly in force in the other Kingdoms of the *Heptarchy*:) Yet that they were alſo aſſented to by the *Wittena Gemots*, pray ſee the Concluſion of theſe Laws in Sir *H. Spelman*. The Words are remarkable; *Ego Ælfredus, Weſt-Saxonum Rex, oſtendi hæc omnibus Sapientibus meis, & dixerunt placet ea cuſtodiri.* So that the calling them the Laws of King *Alfred*, or King *Edward*, doth no more prove that they alone made them, than our now citing ſuch or ſuch a Statute of King *Hen.* 8. or King *Charles* I. do therefore ſuppoſe, that thoſe Kings made Laws by their own Sole Authority; ſuch Phraſes among ancient Hiſtorians, as well as ourſelves at this Day, being uſed only for Brevity ſake, and ſignify no more than their Confirmation of them.

M. I ſhall not deny, but that our ancient *Engliſh* Kings did for the moſt part make no Laws without the Conſent of their Great Council: Yet I think I can give you an unanſwerable Argument to prove, that the very Being and Conſtitution of Parliaments, or Great Councils, did in the beginning wholly proceed from the Grace and Favour of ſome of our ancient Kings; though to which of them to aſcribe it, is not eaſy to determine. But if we may believe your own Author the *Mirrour*, he tells us almoſt at the very beginning; *That King* Alfred, *for the good State of the Realm, cauſed to aſſemble the Counts or Peers; and then ordained for a perpetual Cuſtom, that twice in the Year, or oftner, for Buſineſs in time of Peace, they ſhould aſſemble at* London *to treat of the Government of the People of God, and how Folks ſhould keep themſelves from Offences, and live in Quiet, and ſhould receive Right by certain Uſages and Judgments. And according to this Eſtabliſhment were made divers Ordinances by ſeveral Kings, until the preſent King* (viz.) Edw. 1ſt.

But to come to the Proof of what I affirm, it is certain, that in thoſe firſt Times the *Saxon* Kings conferred all the Biſhopricks, and principal Abbeys in *England*, *per Annulum & Baculum*, as *Ingulf* and *Malmsbury* expreſly tell us. And as for the Earls or Aldermen of Counties, as alſo the Great *Thanes*, Judges or Noblemen of the Kingdom, they were only Offices held for Life in thoſe Times, which the King might diſcharge them of at his Pleaſure: And hence we find the Titles of *Aldermannus Regis*, and *Thanus Regis*, ſo frequently to occur in our ancient Hiſtories and Charters: Thoſe comprehended under the general Name of *Wites*, being the only conſtituent Parts of the Great Council of the Kingdom in thoſe Times; for as concerning thoſe we now call the *Commons of England*, we do not ſo much as find the leaſt mention of them, or any Repreſentatives for them, till the latter end of the Reign of King *Henry* the 3d. or the middle of *Edward* the 1ſt. as I think Dr. *Brady* hath learnedly and fully proved in his laſt Edition of his Anſwer to Mr. *Petyt*'s Treatiſe of the *Rights of the Commons of* England *Aſſerted*. Now if it plainly appears, that every Part or Member of the Parliament did anciently receive their very Being from the meer Grace and Conceſſion of our ancient Monarchs; can you, or any reaſonable Man, aſſert with any colour of Truth, that our Great Councils, or Parliaments, could be a Part of the Fundamental Conſtitution, and as ancient as the Government itſelf? And if Parliaments did thus receive all that Authority they now exerciſe from the King's Bounty, can any Man doubt whether all the Rights and Privileges we now enjoy, are to be aſcribed to any other Original? For if the very Keepers (as you will have it) of theſe Liberties, did all proceed from the King, then certainly the things to be kept muſt do ſo too; and when you can anſwer this Argument I have now brought, I think I may ſafely promiſe you to be your Proſelite, and to come over to your Opinion.

M. I

M. I confeſs, this is the moſt plauſible Argument you have hitherto urged; and if I can't anſwer it, I do likewiſe promiſe you to become your Convert. But though, granting that Parliaments might have received their Being from the Favours of our Kings, I might deny your Conſequence, that therefore it will follow that all the Rights and Liberties of the Subjects of *England* muſt do ſo too; ſince they might very well have reſerved to themſelves both Hereditary Properties, as alſo a Right to their Lives, Liberties and Eſtates, which the King ſhould not take from them without juſt Cauſe, and legal Trial; which when they found invaded by ſucceeding Princes, they might then (and not till then) find conſtant Great Councils and Parliaments to be neceſſary for that end, and as the firmeſt Bulwark againſt the Tyranny of ſucceeding Princes: But the Author of the *Mirrour*, in the Section before the place from whence you took your laſt Quotation, expreſly tells us otherwiſe; that upon the firſt Election of a King to reign over the reſt of the *Saxon* Princes, *they firſt of all made him to ſwear, That he would maintain the Holy Chriſtian Faith with all his Power, and would govern his People according to Right, without regard to any Perſon, and ſhould be liable to ſuffer Right* (i. e. *Judgment*) *as well as others of his People.* And though I do not give any Credit to all the Story he there relates of 40 Sovereign Princes in this Iſland at once; yet the Subſtance of it may be true, that this Election was made of King *Egbert*, by the 40 Earls or Counts of thoſe Provinces, which were afterward by King *Alfred* called *Shires*.

But that this Author aſcribes the Beginning of Great Councils to the firſt Inſtitution of the Government, pray ſee what he there farther ſays: *And though the King can have no Peer in the Land, nevertheleſs, if by his own Wrong he offends againſt any of his People, none of thoſe that judge for him can be both Judge and Party: It is therefore agreeable to Right, that the King ſhould have Companions to hear and determine in Parliament all Writs and Complaints concerning the Wrongs of the King, Queen, and their Children, of which Wrongs they could not otherwiſe have common Right. Theſe Companions are therefore called* Counts, *after the* Latin, Comites. Whereby you may ſee, that this Author and *Bracton*, who were Contemporaries, were of the ſame Opinion in this important Point: And I cannot imagine how any Prince, who had Power ſufficient in his hands to do what he pleaſed, (as you ſuppoſe our *Engliſh Saxon* Monarchs to have had at the firſt) would ever, if they could have help'd it, have inſtituted a Court, one of whoſe chief Buſineſſes it was to examine and redreſs the Wrongs and Oppreſſions of themſelves, their Wives and Children.

But beſides all this, what you ſay might be ſomewhat likely; that our Parliaments, or Great Councils, did owe their Original only to the Kings good Will and Pleaſure, did we not find the like Conſtitution to have been in all the Neighbouring Kingdoms in *Europe*, which have been raiſed according to the *Gothic* Model of Government, upon the Ruins of the *Roman* Empire. Now let us look into *Scotland*, and there we ſhall find this Inſtitution as ancient as any Hiſtory or Record they have. If we paſs into *France*, we ſhall find their Aſſembly of Eſtates, or Great Council, to have been as ancient as their firſt Kings, and to have had as much Power as any where elſe in *Europe*: Since they not only frequently elected, but alſo depoſed their Kings of the firſt Race, and diſpoſed of the Succeſſion of the Crown as they thought fit. If we look into *Spain*, we ſhall find in the two greateſt and moſt conſiderable Kingdom, *viz. Caſtille* and *Arragon*, the like Aſſemblies: The Power of which was ſo great in the latter, that they could even depoſe the King himſelf, if he tyranniz'd over or oppreſs'd them. If we go more Northward, we ſhall find in the ancient Kingdoms of *Denmark* and *Sweden*, and *Norway*, that their Aſſembly of Eſtates, or Diets, elected their Kings, and could likewiſe depoſe them, till thoſe Kingdoms became Hereditary, which was but of modern Times. I ſhall omit *Poland*, becauſe perhaps you may diſpute whether it is a Kingdom, or a Commonwealth. But if we paſs into *Hungary*, which was inſtituted by the *Huns*, a Nation of *Gothic* Original, we ſhall find not only the like Aſſembly of Eſtates, as in the other Kingdoms; but alſo that they had a Ma-

Vi. Hottoman Franco Gallia.

giſtrate

giſtrate called the *Palatine*; who was, as it were, the Conſervator of the People's Liberties, and who could reſiſt even the King himſelf if he invaded them; and which is alſo very remarkable in all theſe Kingdoms, the Repreſentatives of the Cities, or principal Towns, (which conſtituted the third Eſtate, or Commons in thoſe Kingdoms) had always a Place in thoſe Great Councils.

So that, to conclude, it is almoſt impoſſible to conceive how theſe Kingdoms I have now mentioned, could all agree to fall into the ſame ſort of Government about the ſame time, unleſs it had proceeded from the particular Temper and Genius of the *German* and *Gothick* Nations, from which they were derived: Or who can believe, that all theſe Nations, and their Kings, finding the like Conveniencies from theſe Great Councils, and Inconveniencies by the want of them, ſhould all conſpire to ſet them up in each of theſe particular Kingdoms.

M. I will not deny but that the Inſtitution of Great Councils, or Aſſemblies of the Eſtates, might be as ancient as the Government itſelf, in ſeveral of thoſe Kingdoms you mention, which were at firſt elective: But what is that to *England*, where our Monarchy hath been by Succeſſion from the firſt Inſtitution of it, and not Elective, as you ſuppoſe? Nor do I much value the Authority of the *Mirrour* as to the great Antiquity he aſcribes to this Aſſembly of Counts, or *Comites*, (as *Bracton* calls them) and in which, by the way, no Commons are mentioned.) And though I grant, the Judicial Power of the Houſe of Peers, is very ancient; yet that it wholly proceeded at firſt from the Indulgence of our Kings, appears from hence, that there was always a Neceſſity of the King's Preſence in Parliaments, which is very well proved by Sir *Robert Cotton* in a learned Treatiſe written on that Subject: Wherein he proves, that in all Conſultations of State, and Deciſions of private Plaints, it is clear from all Times the King was not only preſent to adviſe, but alſo to determine. And whenſoever the King is preſent, all Power of Judging, which is derived from his, ceaſeth; the Votes of the Lords may ſerve for matter of Advice, the final Judgment is only the King's: But indeed of late Years, Queen *Mary* and Queen *Elizabeth*, by reaſon of their Sex, being not ſo fit for publick Aſſemblies, have brought it out of uſe; by which means it is come to paſs, that many things, which were in former Times acted by Kings themſelves, have of late been left to the Judgment of the Peers; who, in quality of Judges extraordinary, are permitted, for the Eaſe of the King, and in his Abſence, to determine ſuch Matters as were anciently brought before the King himſelf, ſitting in Perſon, attended by his Great Council of Prelates and Peers: And the Ordinances that are made there, received their Eſtabliſhment either from the King's Preſence in Parliament, where his Chair of State is conſtantly placed, or at leaſt from his Confirmation of them, who in all Courts, and in all Cauſes, is Supreme Judge. All Judgments are by, or under him, and cannot be without, much leſs againſt his Approbation: *The King only, and none but He, if He were able, ſhould judge all Cauſes*, ſaith *Bracton*. So that nothing ſeems plainer to me, than that the Juriſdiction which the Houſe of Peers have hitherto exerciſed for the Hearing and Determining all Cauſes, as well Civil as Criminal, by way of Appeal, not only between Subjects, but alſo in all Accuſations againſt the Lords themſelves, proceeds wholly from the Conceſſion of our Kings; which may appear by an ancient Precedent, mentioned by Abbot *Brampton* in his Hiſtory. It is the Caſe between King *Edward the Confeſſor*, and *Godwin* Earl of *Kent*, whom the King accuſed for the Death of his Brother Prince *Alfred*, before the Houſe of Peers; and there you will find, that after the Earl had put himſelf upon the Judgment of the King's Court, the King thereupon ſaid; "You Noble Lords, Earls and Barons (i. e. *Thanes*) of "the Land, who are my Liege-Men now gathered here together, and have "heard my Appeal and *Godwin*'s Anſwer; I will, that in this Appeal between "us, ye decree right Judgment, and do true Juſtice." And upon their Judgment, that the Earl ſhould make the King ſufficient Satisfaction in Gold and Silver, for the Death of his Brother; the King being thereof informed, and not willing to contradict it, (the Hiſtorian there ſaith) *He ratified all they had judged.* I could give you many other Precedents of latter Date, were it not too tedious:

F. F. G. J. p. 34.

Vi. Script. x *Ann.* 1041. *Col.* 937.

But

But this is sufficient to shew, that what the Peers acted in this matter, was by the King's Sole Will and Permission. I shall only conclude with one Precedent more, in a Case somewhat of a like Nature. It is that of *Henry Spencer* Bishop of *Norwich*, 7 *Rich.* II. who was accused for joining with the *French*: The Bishop complained what was done against him, did not pass by the Assent and Knowledge of the Peers: Whereupon it was said in Parliament; "That the Cogni-"zance and Punishment of his Offence, did of common Right, and ancient Cus-"tom of the Realm of *England*, solely and wholly belong to our Lord the King, "and no other." From all which I infer, that the Judicial Power exercised by the House of Peers, is meerly derivative from, and subservient to the Supreme Power residing in the King. From whence it also follows, that if the Peers have no Power nor Honour but what proceeds from the Prince, and that the Commons were of a much later Date, then both the Being and Privileges of both Houses had but one and the self-same Original, *viz.* nothing else but the meer Grace or Favour of our Kings. I have only added this, the better to enforce my former Argument; and therefore I desire you would now answer them both together.

F. I am very glad your last Argument doth not prove so formidable as you suppose; for to remove that out of the way, I must tell you that you now very much mistake the Question; which is not only concerning the Judicial Power of the Peers alone, but the Legislative Power of the House of Peers and Commons taken together, which is the Subject of our present Dispute: And therefore if I should grant you, that the Judicial Power of the Peers is derived wholly from the King; yet would it not at all impair the Legislative Power of either of the Houses, which no Historian or Law-Book that I know of (that is of any Credit or Antiquity) ascribes to the King's Favour, as you suppose: Nor is it true, that the House of Peers can give no Judgment, either Civil or Criminal, without the King's Consent or Approbation, which is never so much as ask'd, let the Cause be what it will; nor is his Presence at such Judgments at all necessary; but indeed you confound (the King's Council in Parliament, (where I have shewed you already, he sat and dispatched divers Causes in a Room or Chamber, distinct from that of the Peers) or House of Lords.

But to come to your main Argument, that our Parliament must owe its Original to the King, because each of the Estates of which it consists, doth so. This I hope will prove as weak, when thoroughly considered: For first of all I could shew you, that these Councils could not owe their Original to the King, since the *Saxon* Kings rather owed their Original to them, by whom they were most commonly elected, as I could shew you out of our ancient Historians, if it were now a proper time for it. But as for our Bishops and Abbots, *&c.* which anciently made so great a figure in our *Saxon* Great Councils, (which I can shew you, were then both Civil and Ecclesiastical Assemblies) I have already proved out of *Tacitus*, that among the ancient *Germans* (a part of whom our ancient *English Saxons* were) their Priests (who were their Clergy) had a consi-
L. 2. c. 13. derable Authority in their Common Councils. And can any Body believe, that a Sort of People so powerful and subtile, as the Priests then were, would lose their Power after they came over into *England*? And we find in *Bede*, that *Edwin* King of *Northumberland* consulted with a Council of his Great Men and Priests, concerning his embracing the Christian Religion; and when it was generally received, can any Body think that the Christian Bishops and Clergy would not expect to succeed in the same Station which the Heathen Priests before held in their
Vi. Spel. Coun. p. 619, 620. Councils? And that they enjoyed this Power very early, appears from hence, that the same *Ethelbert* could not endow the Church and Monastery of *Canterbury*, *sine Assensu Magnatum & Principum tam* Cleri *quam* Populi.

But indeed you are as much mistaken in the Manner of the ancient Elections of Bishops and Abbots in *England*: For though I own that at the time of the Conquest, and somewhat before, there might be no such Elections of them as the ancient Canons required; yet that this was not so at the first, you may see

in

in *Bede's* Eccleſiaſtical Hiſtory, and other Hiſtorians; where it is often mentioned, that Biſhops were choſen, according to the Canons, by the Archbiſhops and Biſhops of the Province, and Abbots by their Convent: Nor was the King's inveſting of them *per Annulum, & Baculum*, then look'd upon as any Derogation to their Canonical Election, that being no more than either a Ceremony of inveſting them with their Temporalities, or a Token of the King's Confirmation of the Election. And that this was ſo, appears by King *Edgar's* Charter to the Abby of *Glaſtonbury*; wherein he retains to himſelf, and his Heirs, *Jus tribuendi fratri* Electo *Baculum Paſtoralem.*

But that which ſo much ſcandalized both *Ingulf* and *Malmsbury*, was a Cuſtom then in uſe, as alſo long before the Conqueſt, of Confirming the Biſhop Elect in a full Synod or Parliament. And to this Cuſtom *Ingulf* refers, when he tells us, *A multis annis retroactis nulla erat Electio Prelatorum mere Libera, & Canonica: Sed omnes Dignitates tam Epiſcoporum quam Abbatum Regis* Curia *pro ſua Complacentia conferebat.* Where, by *Curia Regis*, you muſt not underſtand the King's Court in the Senſe it is commonly taken, but for the Great Council or *Mikel Synod*, as it was then called, and which diſpatched Eccleſiaſtical, as well as Civil Affairs, in the ſame Senſe as *Curia Regis* is uſed by *Brompton*, in the Caſe of King *Edward* and Earl *Godwin*, which you but now cited: And in which Senſe it is always uſed by *Ingulf*, when he ſpeaks of the Great Councils under the two *Williams*. I will not be very tedious on this Subject, and ſhall therefore give you but one Authority on this Head; and it is that of *Wulſtan*, who was made Biſhop of *Worceſter* in the time of *Edward the Confeſſor*; and that, as *Matt. Paris* tells us, *Unanimi conſenſu tam Cleri, quam totius Plebis (Rege ut quem vellent ſibi eligerent Præſulem annuente) in Epiſcopum ejuſdem loci eligitur.* And then he goes on thus; *Nam licet fratrum non deeſſet Electio*; yet that there concurred to it, *Plebis Petitio, Voluntas Epiſcoporum, Gratia Procerum, Regis Authoritas:* All which amounts to no more than that he was propoſed by the People, choſen by the Biſhops and Peers, and confirmed by the King: Yet that all this did not hinder him from being inveſted *per Baculum, & Annulum*, as the Cuſtom then was, may appear by the Speech this Biſhop *Wulſtan* made at the Tomb of *Edward the Confeſſor*, whither he went to reſign his Paſtoral Staff after his being deprived of his Biſhoptick by Archbiſhop *Lanfrank*, and the Synod. And the Concluſion of this Speech is remarkable, *Tibi* (ſcil. *Edwardo*) *Baculum reſigno qui dediſti, Curam eorum dimitto quos mihi commandaſti.* A like Example I could give you of the Election of this Archbiſhop *Lanfrank* himſelf in the King's *Curia*, or Great Council, not long after the Entrance of King *William*. But for this I refer you to *Eadmerus*, and the Reign of that King, printed at the end of Mr. *Taylor's* Hiſtory of *Gavel-kind*.

Ingulph. Hiſt. fol. 509. b.

p. 20. 10.

But admitting that the King alone had in thoſe Days conferred all Biſhopricks, does it therefore follow, that his Nomination of Biſhops, in the purſuance of that Truſt which the Kingdom repoſed in him, did likewiſe make them to derive all the Right they had to ſit in the Great Council from the King's ſole Authority? You might indeed with as much Reaſon urge, that becauſe the Emperor *Theodoſius* (as likewiſe divers of his Predeceſſors) did nominate Biſhops to Sees, therefore they did likewiſe receive from them all the Authority they had of appearing and acting in General Councils, which I am ſure you are too good a Church of *England* Man to affirm.

M. I muſt confeſs I never did ſo cloſely examine the antient Form of conferring of Biſhopricks before the Conqueſt, as I find you have done: And I will better examine your Authorities; and if I find this Cuſtom to have been conſtant and uniform, I ſhall come over to your Opinion. Though I doubt it will not prove to have been ſo general as you would make it; ſince by the Authority you have now brought out of *Mat. Paris* it appears, that it was the King who gave leave to this Election of Biſhop *Wulſtan* in the Great Council, which I am not yet convinc'd did then take upon them to meddle in Eccleſiaſtical Matters without the King's Conſent: But ſince you have ſpoken enough concerning the Right and Antiquity of the Biſhops ſitting in our Great

Councils, it is time you now ſpeak of the Right of the Peers, or Temporal Lords, which certainly could have no place there but from the Favour and Conceſſion of our Kings: So that whether we conſider thoſe Lords in the *Saxon* Time as Rulers of Counties, called in old *Engliſh Earls* or *Aldermen*, in *Latin Duces* or *Comites*; or elſe as Judges or Counſellors, called in old *Saxon Wites* or *Wiſemen*, in *Latin Sapientes*: Or laſtly, as *Thanes*, in *Latin Miniſtri*, who were either Military Tenants, or Civil Miniſters; or elſe Officers of the King in his Court, or other Employments; none of them were Hereditary in thoſe Times, but all of them either depended upon the King's Will, or elſe owed their Honours and Eſtates to his Favour.

F. I hope, notwithſtanding the Confidence you put in this part of the Argument, that it hath no more weight in it than the former. For though I grant there was no ſuch thing as Hereditary Earldoms before the coming in of the *Normans*: So that though both the Earls and Aldermen might have Places in the Great Councils, *Ratione Officii* (as the Earl Mareſchal of *England* has at this Day) and not by *Tenure*, as they did after that time; yet I very much doubt whether they ſate there only *Ratione Officii*, and not as *Thanes*; or by Reaſon of their great Lordſhips, or Eſtates in Lands; but if they ſate there as Earls or Aldermen, yet might they not be the only Perſons that ſate in thoſe Councils by that Title. For there were, beſides theſe, Aldermen of Cities and Boroughs, who were elected by thoſe Places; and who it is very likely appeared for them as their Repreſentatives in thoſe Councils, until by Succeſſion of Time thoſe Towns began to ſend two Burgeſſes in their ſtead; ſome Footſteps of which ſtill remain in *London*, where the Aldermen of every Ward are firſt propoſed to be elected Parliament Men before any other: And it is certain that theſe Aldermen, in the moſt antient Cities, as *London*, *York*, *Lincoln*, &c. are not elected by any Grant or Charter from the Crown, but by an immemorial Right of Preſcription.

Vi. Dugdale's *Preface to his Baronage of England.*

But admitting that theſe Earls or Aldermen appeared in theſe Councils, by reaſon of their Offices or Dignities which the King conferred upon them, yet doth it not prove, that the very Office itſelf proceeded wholly from him; ſince we find the Authority of thoſe chief Men, whom *Tacitus* calls *Princes*, (and which anſwer theſe Earls) to have been uſed among the antient *Germans* long before, when he tells us in the ſame Chapter where we cited the reſt; *Jura per Pagos, Vicoſque* [*Principes*] *reddunt, centeni ſingulis ex plebe Comites Concilium ſimul & auctoritas adſunt.* Which exactly anſwers our County, and Hundred Courts, under the *Saxon* Kings; wherein the Alderman of the County, or his Deputy the Sheriff, preſided, and the Freemen of the County or Hundred were the Judges of all Matters of Fact. So that though the King might apponit theſe Princes or Governors of Provinces, or Counties, yet doth it no more follow, that they owed their Being and Place in the Great Council wholly to his Will, than (as I ſaid before) ſuppoſing that the King had antiently the Nomination of all the Biſhops and Abbots in *England*, that therefore they muſt alſo owe their Place in our great Councils, or Synods, wholly to them; ſince the King performed both of them as a publick Truſt committed to him by the Commonweal in the one caſe, as much as in the other.

But indeed, I think the greateſt part of the Members of this Aſſembly (beſides Aldermen and Burgeſſes for Cities and Towns) conſiſted of thoſe *Thanes*, whoſe Names are often found in the Subſcription of the antient Charters of our *Saxon* Kings after the *Principes*, *Duces* and *Comites*; and that though many of them might be the King's *Feudal Thanes*, or Tenants in Grand Serjeanty, or Knights Service in chief, as Mr. *Selden* tells us in his *Titles of Honour*, yet that Author no where excludes the Mediocres or Lesſer, *i. e.* middle or leſs *Thanes*, from having Voices in thoſe Aſſemblies, who were afterwards ſtiled *Vavaſſours*, or Lords of Townſhips, afterwards called *Manors*, with Courts annexed to them under the Names of *Sac* and *Soc*; which were the ſame with our *Court-Leet* and *Court-Baron*. Eſpecially, if you pleaſe farther to conſider what a vaſt

Seld. *Tit. Hon. fol.* 507, 508, 515.

a vaſt number of *Alodarii*, or *Free Tenants* there were then, who held their Lands diſcharged of all Services, but the common Burthens and Taxes of the Nation, none but the Lands of the King's *Thanes*, being held by Military Services before the Entrance of the *Normans*.

So that whoever will but conſider the Nature of our *Saxon* Councils, will find, that the greateſt part of the Perſons that appeared there did not owe their Places only to their being the King's Miniſters or Officers, as you ſuppoſe, but to their holding ſuch Lands and Poſſeſſions as capacitated them, and gave them a Right to have Places in thoſe Great Councils. And that this was ſo, we need not go no farther than the Laws of King *Athelſtan*, where you will find *Gentility* itſelf annexed to an Eſtate in Land: For if you will but be pleaſed to conſult King *Athelſtan's* Laws, you will there find, that if a *Villain*, or *Cheorl*, could ſo thrive as to get an Eſtate of *five Hides* in Lands, he was reckon'd a *Thane*, *i. e.* a *Gentleman* or *Nobleman*, as they were promiſcuouſly reckoned at that time. *Vi. Lamb. p.* 54.

So that though I ſuppoſe there might not be in thoſe Times that exact Diſtinction between Peers and Commons, as there hath been eſtabliſhed ſince the coming in of the *Normans*; yet was it the ſame thing in effect, ſince the Biſhops, Earls or Aldermen of Shires (though not enjoyed as Hereditary Honours) might make them the greater Nobility or Peers, as the *Thanes* were the leſs Nobility, Gentlemen, or principal Freeholders; who all appearing in Perſon, might, together with the Aldermen or Burgeſſes of Towns, repreſent thoſe which we now call the *Commons*. And ſuppoſing that then there were no Knights of Shires, yet theſe being then the only Proprietors of any conſiderable Eſtates of Land in the Nation, might very well repreſent all their Vaſſals or Under-Tenants, as Tenants for Years, and at Will, are at this Day by the Knights of Shires, though they have no Votes at their Election.

To conclude: Though I grant that the Kings of *England* are the Fountain of that Honour, which we call *Peerage*; yet it is only in purſuance of that antient Conſtitution which their Anceſtors brought out of old *Saxony* and *Normandy* along with them, as the firmeſt Defence of Kingly Power againſt the Inſolency and Incroachments of the common or meaner ſort of People, as well as Tyranny in their Princes. And therefore in all Monarchies where there is no Hereditary Nobility, the Prince hath no ſurer way to maintain his Power than by Standing Armies, to whoſe Humours and Factions he is more ſubject, and is alſo more liable to be murdered, or depoſed by them (when diſcontented with him) than ever any limited Prince yet was, or can be by his Nobility or People. As I could ſhew you from a Multitude of Examples, not only from the *Roman*, but *Mooriſh*, *Arabick* and *Turkiſh* Hiſtories: And therefore, to conſtitute a laſting, ſtable, limited Monarchy (as ours is) it muſt be according to the Model I have here propoſed.

M. I ſhall not contradict the latter part of your Diſcourſe; but I muſt freely tell you, that if (as you yourſelf grant) there were no Knights of Shires in the *Saxon* Times, I cannot ſee how thoſe we call the Commons of *England* had then any Repreſentatives in the Great Council; ſince thoſe *Thanes*, or Lords of Manors, whom you ſuppoſe to have repreſented their Tenants or Vaſſals, were never choſen by them, and conſequently could not properly be their Repreſentatives: But I think it will be eaſy enough to prove, that none of your inferior or middle *Thanes*, but only the chief or ſuperior, had Places in thoſe Aſſemblies. So that theſe *Feudal Thanes*, or ſuch as held of the King in chief by Military Service, were of the ſame kind with them that were after the *Norman* Times Honorary or Parliamentary Barons, and their Lands alone were the Honorary Thanelands, and ſuch as were afterwards Parliamentary Baronies. Nor can I find any Footſteps in our antient *Engliſh* Hiſtories of Cities and Boroughs ſending any Repreſen-

Repreſentatives to thoſe Great Councils. So that admit I ſhould own at preſent, that the Biſhops, and ſome great Abbots, had, from the firſt ſettling of Chriſtianity in this Iſland, an indiſputable Place in the Great Councils; and likewiſe that the Earls, Aldermen, or great Nobility, had alſo Votes in thoſe Aſſemblies; and that the chief *Thanes*, or leſs Nobles, had alſo their Places there, by reaſon of the Tenure of their Eſtates: Yet certainly the *Houſe of Commons* was of a much later Date, and owed its Being either to the Grace and Favour of our Kings of the *Norman* Race, or elſe to thoſe that had uſurp'd their Power. And this I think Dr. *Brady* hath very well proved againſt Mr. *Petyt*: And I think I could convince you alſo of the Truth of it by his, as well as other Arguments, were it not now too late to enter upon ſo long a Subject.

F. Therefore, pray let us defer any further Diſcourſe of this Queſtion 'till the next time we meet; wherein I hope I may ſhew you, that if you owe that Opinion to the Doctor's Arguments, he hath led you into a very groſs Miſtake. And I ſhall only at preſent take my leave of you, and bid you good Night.

M. I wiſh you the like.

Bibliotheca Politica.

DIALOGUE VI.

Whether the *Commons* of *England*, represented by *Knights*, *Citizens*, and *Burgesses* in *Parliament*, were one of the Three *Estates* in *Parliament*, before the 49th of *Henry* III. or 18th of *Edw.* I.

M. SIR, You are welcome; and since you were pleased to send me word, that you would come and sit with me this Evening, I have been looking over all the *Saxon* Councils, collected by Mr. *Lambard*, and Sir *H. Spelman*, and yet I cannot find in them any Mention of Knights of Shires, or Burgesses for Cities or Boroughs; the only Persons there mentioned, as Members of those Great Councils, being *Archbishops*, *Bishops*, *Abbots*, and *Great Lords*, and *Judges*; often called by the general *Latin* Names of *Magnates*, *Principes*, *Proceres*, *Optimates*, or *Primates Regni*, which were all comprehended under the *Saxon* Word, *Wites*, i. e. *Sapientes*; by whom (as Sir *H. Spelman* shews us in his Glossary) were meant only *Senators*, or Wise-men; that is, either *Noblemen*, or *Great Lawyers*; *Wite*, in *Somner*'s *Saxon* Dictionary, being first rendred *Optimas*, a Nobleman; and then *Sapiens*, a Wise-man. So that these *Wites*, or *Sapientes* (so often mentioned in our Ancient *Saxon* Laws) when they are put alone, signify all the Ecclesiastick, as well as Lay-Members of the great Council, such as Earls, Aldermen, and *Thanes*, and Judges, as Dr. *B.* more particularly proves, in his Glossary at the end of his first Volume. But by *Principes*, and *Optimates*, can only be meant *Nobles*, or *Chief Men*, as the Word *Princeps*, *Magnas*, and *Optimas* do always signify in the *Latin* Tongue: That is to say, such of the King's great Officers, Noblemen, and Judges of the Kingdom, as he pleased to chuse out, and call to his Great Councils, either for their great Wisdom or Estates, to make use of their Advice and Assistance for the making of Laws.

Tit. Wites, *B. O. Pag.* 66, 67. Et Sparsim.

Therefore pray shew me where there are any Commons once mentioned in any of these Councils, or any that represented them. Here are indeed particularly mentioned, *Archbishops*, *Bishops*, *Abbots*, *Aldermen*, *Wites*, *Great-Men*, and *Chief-Men*, or *Noblemen*. These were all the Orders of Men that were then the constituent Parts of those Great Councils, *Wittena-Gemotes*. And if the Commons, as now taken and understood, were then Members of them, they must be comprehended amongst the *Wites* or *Sapientes*, the Wise Men. But that it cannot probably be so, I shall prove, (1.) That most of the *Saxon* Laws, in their Prefaces are said to be made and ordained by their Kings, with the Advice and Assistance of their *Wites*, or Wise Men simply, without mentioning any particular Orders of Men whatsoever. And when any Rank or Degrees of Men are particularly mentioned, they are only the same before rehearsed, both Ecclesiasticks

B. A. P. *P.* 9, 10.

and Laicks. (2.) I note, that it cannot be denied, but that in every one of these *Wittena Gemotes*, *Micel Synods*, *Micel Gemotes*, or *Great Councils*, where the Laws are said to be made only by the King, with the Advice of his *Wites* or *Sapientes*, without particularizing any Degrees of Persons; the *Bishops* and *Abbots* for the Spiritual Nobility, and the *Earls*, or *Aldermen* and *Thanes*, for the Temporal, were present at the making of them; as also the Judges, if there were any of the higher Class, other than *Bishops*, *Aldermen*, and *Gereves*, or *Prepositi*. (3.) I note, that it follows from thence, that these all jointly were the *Sapientes*, where there are only *Wites* or *Sapientes* in general named, without reciting any particular Orders or Degrees of Men. Now if you can shew me from as good Authorities as I have here produced, that any of the Commons sate in these Great Councils, at least to represent the Body of the Commons among the *Saxons*, I will grant, that during the *Saxon* Government, the Freemen, or Commons of *England*, as now called, and distinguished from the Great Lords, were an essential constituent part of the Common Councils of those Times.

F. To return you as short an Answer as I can, to these Authorities you now cite, I must in the first Place premise, That though I grant all *Nobility* among the Ancient *Germans*, *Saxons*, and *Franks*, (who were but so many Stirps or Branches of the *Gothic* Nation) were at first wholly Military; yet it is a very great Mistake, and savours of the Prejudices of the Age and Country we live in, to imagine that anciently there were the same Distinctions between Peers or Noblemen, and Gentlemen, (whom we now call Commoners) as there are now. For if we go but over into *France* or *Germany*, we shall find no Difference there between the greater and the less Nobility; and a Gentleman is as Noble as a Duke, or a Marquis. And if we pass farther, into *Denmark* and *Norway*, from whence most of the *Danish* Laws are supposed to come, it is certain, that but a few Years ago, there were no such Titles among them as *Earls*, or *Barons*; every Lord of a Town, or District, being that which they call an *Adelman*, or *Nobleman*. And so I suppose it anciently was among the *English Saxons*. The Word *Athel*, or *Adel*, comprehending (to speak in our present Dialect) all Degrees, as well *Noblemen*, as *Gentlemen*; and for this I can give you the Authority of an Ancient Author, *viz.* *Paulus Warnefridus de gestis Longobardorum*, who speaking of these *Adelmen*, or *Adelings*, tells us; *Sit apud eos quidam Nobiles prosapia vocabantur.* So likewise Sir *H. Spelman* in his Glossary, *Tit. Adelingi*, *Tit.* p. 9, 10. writes thus, *Anglorum legibus dici pro nobilibus in genere, quod nec dum apud Germanos antiquatum est, qui omnes nobiles* Ædelmen *vocant, a Saxonico Ædel pronobili:* And Mr. *Selden* in his Titles of Honour, makes the Word *Æthelum* to signify all one, either Gentlemen or Noblemen. Besides, *Adam* of *Bremen*, and * *Nitardus* likewise, both Ancient Historians, divide the *Saxon* Nation into Three different Degrees, or Orders, *viz.* into *Athelings*, i. e. *Nobles*; *Frilings*, i. e. *Freemen*; and *Lazzos*, i. e. *Villains*, *Bours*, or *Bondmen*.

Cap. 21.

Pag. 708.

* *Lib.* 4.

Besides which *Noblemen*, or *Gentlemen*, there was likewise another Sort of Men, who though of an Inferior Rank, yet as Freemen, and having a considerable Share of the Riches and Strength of the Nation in their Hands, had likewise a Place in the Great Councils, as well as the former. And these were the Aldermen, or other Magistrates of Cities and Boroughs; and in this they resembled the *German* Diets, whose constituent Members were, according to *Goterus*, an Ancient *German* Poet,

Prælati, Proceres, missisque potentibus Urbes.

But since this is a Dispute about the Signification of Words, in what Sense they were used in that Age we are now treating of, it will not be inconvenient to examine from the most Learned Glossarists, the Ancient Signification of those Words which are in Dispute between us. And therefore, since we are agreed about the Meaning of all other Words except these, *viz.* *Aldermen*, *Thanes*, *Wites*, *Magnates*, *Optimates*, and *Principes*, *Proceres*, or *Primates*, let us examine each of their Ancient Significations. To begin then with the Word Ealdor-man, Alderman, which Word was of a very general Signification: For Sir *Hen. Spelman* in his Glossary, Tit. *Alderman*, tells us, that there was *Aldermannus Regis*, *Comitatus*, *Civitatis*, *Burgi*, &c. *de quorum potestate non facile est definire.*

Mr. *Lambard* renders the Word Ealdorman, *in Latin Senator*, (i. e. *one that had place in the Great Council*); and ſo doth Mr. *Somner* in his *Saxon* Dictionary; from whence you may learn, that this Word is of a large Signification, and might comprehend ſuch as in latter Times were called Commons, to diſtinguiſh them from the Lords or higher Nobility. In his Gloſſary, Tit. Alderman.

Verſtegan renders this Word thus; Ealder, *ſo written in our ancient Language, is properly an Elder, or Senior; yet an* Ealderman, *which we call now an Alderman, was ſuch in effect among our Anceſtors, as was the* Tribunus Plebis *with the* Romans, *that is, one that had chief Juriſdiction among the Commons, as being a Maintainer of their Liberties.* And if ſo, ſuch Perſons muſt certainly have had a Place in the Great Council as Commoners; and therefore muſt from the Reaſon of the thing, ſignify ſomething more in thoſe Times than an Earl, or great Officer of the King only. P. 326.

So likewiſe, that the Word *Thane* comprehended more than the King's Great Feudal, or Military Tenants, may appear by theſe Interpretations of it, which our Antiquaries have given us. The Induſtrious Mr. *Somner*, in his Gloſſary at the end of the X. *Scriptores*, as alſo Mr. *Selden* in his Titles of Honour, do both agree in the difference I now make between the Greater and the Leſs *Thanes*; the former being called cynniger ðegner *Thani Regij*, the other called meðmera ðegnar *Mediocres, vel Inferiores Thani*, Middle, or Leſs Thanes, who were *Maneriorum Domini, Nobiles minores, Vavaſores & nonnunquam liberitenentes.* With whom Sir *H. Spelman* in his Gloſſary agrees, *Thanorum duo erant genera; Majores quos Thainos Regis appellabant, nos Barones Regis, & Thaini Simpliciter, ſeu Thaini Minores qui iidem erant qui Barones Minores, hoc eſt Maneriorum Domini Nobiles minores, & nonnunquam Liberi Tenentes nuncupantur.* So likewiſe Mr. *Lambard* in his Gloſſary, thus, *Thani autem appellatione viri interdum Nobiles, interdum liberæ conditiones homines, interdum Magiſtratus atque ſæpe numero Miniſtri notantur.* And alſo in his Perambulation of *Kent*, ſaith ðegen, was uſually taken for the very ſame that we call now from the *Latin* word *Gentilis*, a Gentleman, that is, Εὐγενής, *A man well born, or of good Stock and Family.* So that I think nothing can be more evident, than that according to the Opinion of our beſt Criticks in the *Saxon* Tongue, the word *Thane* doth not always ſignify a great Lord, or Baron of Parliament, as he is now called, in diſtinction to an Inferior Nobleman or Gentleman. And that there were alſo Burgh *Thanes*, *Thanes* of Cities and Boroughs, will evidently appear from a Writ or Charter of K. *Edward* the Confeſſor, which is ſtill to be found in Sir *John Cotton*'s Library, in theſe words Edwarð King gret Willem ⁊ Leofdan ⁊ ſtlyp porte peten ⁊ alle mine Burgðegner on Lunden frenðlice, which Charter with divers other of like nature, confirming the Privileges of that Monaſtry, were collected by a Monk of *Weſtminſter* called *Sulcardus*, who lived not long after the Conqueſt. P. 267. Spel. *Council. in Leg.* Canuti, P. 69. P. 223. *Sub Effigie Fauſtinæ. A.* 3. F. 97. *Ex Cartulario Cœnobi* Weſtmin.

In the next Place, as for the word *Magnates*, though I grant it there often ſignifies Great Men or Lords; yet not only ſuch as were Lords or Noblemen by Birth, but as I ſhall ſhew you by ſeveral Inſtances, as well before, as after the *Normans* Entrance, that it alſo comprehended the Gentry, or Inferior Nobility, and ſuch as were eminent and conſiderable either in the Countries or Cities, for Intereſt, Office, or Eſtate.

As for the word *Optimates*, I know it ſignifies the better, or beſt ſort of Men; yet not always great Noblemen, or Lords; For in *Monaſtic. Anglic. Tom.* 3. we read of one *Goda*, who under *Edw.* the Confeſſor ſubſcribed himſelf *Optimatem, & Miniſtrum Regalem*, (i. e. *Thane.*) And leſt you ſhould apprehend that *Optimas* ſhould always ſignifiy the King's Thane, or *Tenant in Capite*, *de Freſne* in his Gloſſary defines *Optimates* to be *Vaſſalli Barones qui ab ullo Domino ratione Hominii unde pendent*; but I ſhall ſay more of this word *Optimates*, when I come to ſpeak of the Times not long after *William* the *Firſt*.

In the next place, for the word *Proceres*, it doth not only ſignify Men noble by Birth, but *Iſidore* (a *Spaniſh* Author in the Gothic Times) in his *Origines*, *Lib.* 9. *Cap.* 4. ſays thus, *Proceres ſunt Principes Civium*; and that this word often ſignified in the ancient *Engliſh Saxon*, the Chief Magiſtrates of Cities or Burghs, appears by *Alfrick*'s ancient Gloſſary, where theſe words *Proceres primates, vel primores*, he thus renders yldrt buph papa. And *du Freſne* in his P. 56.

P. 420. Gloſſary alſo, *Proceres appellabantur qui in Civitatibus præcipuos Magiſtratus gerebant.*

As for the word *Principes*, any Man that underſtands any thing of the *Latin* Tongue, knows that it doth not always ſignify Princes, or Men Noble by Birth; but any Chief, or Principal Man remarkable by Place, Office or Dignity; and therefore we often read in *Livy*, and other *Latin* Authors, of *Principes Civitatis*; and in this Senſe I ſuppoſe every Member of Parliament may be reckoned *inter Principes*, among the Conſiderable or Chief Men of the Kingdom: So that when our ancient *Engliſh* Hiſtorians, (as well before as immediately after the *Norman* Conqueſt) do often, after the *Archbiſhops*, *Biſhops*, &c. add, *& cæteri totius Regni Proceres, & Optimates*, or *Principes*, as Members of the great Councils of thoſe Times: Yet that theſe Writers did not then mean what you would underſtand by theſe words, only Princes, Earls, or Great
P. 665. Lords, Mr. *Selden* in his Titles of Honour teaches us, when ſpeaking of this word *Principes* (as the moſt comprehenſive of any) ſays, that tho' *Princeps* in the Singular, were proper to every *Earl* or *Alderman*; yet in the Plural, *Principes* is more often applied comprehenſively to others alſo of leſs, tho' of ſpecial Eminency, ſuch as were *Viri Primarii*, or *Thanes*. And for this he refers us to the Charter of King *Ethelwulf*, (as it is recited by *W.* of *Malmsbury*, *Lib.* 2. *Cap.* 2. and *Ingulph*) wherein that King granted Tithes, and divers other
P. 682. *edit.* Franc. Privileges to the Church-Abbey of *Malmsbury*, which is ſaid to be done *Conſilio Epiſcoporum, & Principium ſuorum*; as alſo of *Hen. Hunt.* Who relating
P. 364. *Edit. ibid.* the Election of *Harold* the Son of King *Cnute*, expreſſes it thus; *Fuit magnum placitum apud* Oxonford *ubi Leofricus Conſul, & omnes Principes eligerunt Heraldum.*

Laſtly, As for the word *Wites* or *Sapientes*, there can be nothing in that Word which can limit it only to Men Noble by Birth, ſince it ſignifies no more than the King's Great Council of Wiſe Men or Senators, and might alſo well refer to the Chief Magiſtrates, or Repreſentatives of great Cities and Boroughs. For *Du Freſne* in his Gloſſary tells us, That among the *Lombards*,
Tom. 3. p. 700. *Sapientes in Italia appellabant, & Civitatum Cives Primarii, quorum Conſilio Reſpublicæ gerebantur.* Hieron. Rubeus, *Lib. Hiſt.* Raven. *Anno* 1297. —— *Sed longe antea illud nomen obtinuit in alijs Longobardorum Civitatibus ut colligere liceret ex Ottone, & Acerbo Morena in Hiſt. Rerum Londevetium*, &c.
Vid. *Grotius Prolegomena in Hiſtor. Gothicam.* Nor is this Authority inconſiderable, ſince the *Lombards* were derived from the *Goths*, from whom alſo the *Engliſh Saxons* had their Original, and had the like fundamental Conſtitution, and were governed by much the ſame Laws.

But that the Title of *Wites* or *Sapientes*, was often attributed to the *Commons* of *England*, I ſhall explain to you when I come to treat of the Antiquity of the *Houſe* of *Commons*, after the *Normans* Entrance; where I ſhall ſhew you, that divers Petitions were directed *a tres Sages les Communes*. And ſure whoſoever is choſen by a County, City, or Borough, as their Repreſentative, and is by them thought wiſe enough to be truſted with their Purſes, and to make Laws for them, may very well (I think) be called in Old *Engliſh* a *Wite*, or in our modern Dialect, a *Diſcreet* or *Wiſe Man*. But let this word *Wites* ſignify what it will, yet it could never mean here *great Lawyers* or *Judges*, as your *Dr.* will have it; ſince I very much doubt whether Law was then a Trade or Profeſſion, or not. And that the *Judges* in thoſe Days had not any more Voice in making Laws, than they have now, or any more to do in it than in the bare drawing of them up, I am very well ſatisfied; ſince if they had any ſuch Power in thoſe Days, I do not believe our Kings would ever have let them have loſt it, ſince it was ſo advantagious to their Prerogatives that they ſhould keep it. I could give you divers other Authorities, though of later date, to prove that the *Commons* were often included under the word *Sapientes* in our ancient Statutes and Records; but I refer thoſe for the Times after the Conqueſt. I beg your pardon for being ſo prolix already, which the Abuſe your *Dr.* hath put upon theſe words would not permit me to avoid. But now we have cleared moſt of the Terms in diſpute between us, I hope we may proceed with greater Certainty.

M. Though your Diſcourſe hath been ſo long, yet ſince it is ſo eſſentially neceſſary to the right underſtanding the matter in hand, I am well ſatisfied; and I ſhall more fully conſider the Account you give of theſe Words another time.

time. But at preſent give me leave to tell you, That ſuppoſe I ſhould admit, that thoſe Words on which you have now given Interpretation of divers Authors, may ſometimes be taken in the Senſe you have now put upon them; and that conſequently the *Commons* might be repreſented under ſome of thoſe general Names; Yet am I not ſatisfied, how the *Aldermen* and *Magiſtrates of Cities and Boroughs*, could be included under this Word *Wites*, ſince in the Auctuary to the Thirty Fifth Law of *Edward* the Confeſſor, 'tis ſaid, *Erant & aliæ poteſtates, & dignitates, per Provincias, & Patrias univerſas, & per ſingulos Comitatus totius Regni conſtitutæ, qui* Heretoches *apud Anglos vocabantur, Scilicet Barones, Nobiles, & inſignes Sapientes*, &c. And *Gregory of Tours*, *Rodovicus*, and many of the Foreign Ancient Hiſtorians, mention *Sapientes* only as Lawyers, Counſellors, Judges; and among the modern Foreign Lawyers, *Hottoman* and *Calvin* ſay expreſly they were ſuch. But perhaps not of the Inferior Rank, no more than the *Saxons Sapientes* were, of which their Witena ȝemoter only conſiſted. And we have at this Day the *Judges*, and *King's Council*, and other great Lawyers, that ſit in the Lords Houſe, and are aſſiſtant to the Parliament, when there is Occaſion. Nor have you yet brought any Proof, that the Cities or Towns then ſent their Repreſentatives to the great Councils in the *Saxon* Times, by this, or any other Title. But as for the Knights of Shires, though I grant the Treatiſe called *Modus tenendi Parliamentum*, mentions ſuch Perſons to have been preſent in Parliament in the Time of King *Ethelred*; yet by that Word Parliament, ſo often uſed by the Author of that Treatiſe, and divers other Circumſtances, it may be eaſily perceived that the Author lived but about the Time of *Edward* III. or *Richard* II. as Mr. *Selden* in his Titles of Honour, and Mr. *Pryn* in his Animadverſions to Sir *E. Coke*'s Fourth Inſtitutes, have very fully proved; ſo that admitting that your *Thanes*, or Lords of Towns, did then appear in thoſe Councils for themſelves and their Tenants, yet could they not be properly ſaid to be their Repreſentatives, becauſe (as I told you before) they were never choſen by them; whereas now the ordinary Freeholders, of Forty Shillings a Year, and the Freemen and Inhabitants in Cities and Towns, have the greateſt Share in the Election of Knights, Citizens and Burgeſſes.

B. G. p. 67.

And as for thoſe *Thanes* you mention, they are thoſe under whom they claimed, owed their Eſtates wholly to the Grants of former Kings, and held their Poſſeſſions from them by ſome Tenure or other. And by Virtue of this Tenure it was, that all the Lands of *England* were liable, even thoſe that belonged to the Church, to thoſe Three Services, anciently called *Trinoda Neceſſitas, viz. Expeditio, Caſtelli, & Pontis extructio*, that is, Military Service againſt a Foreign Enemy, and the Repair of Caſtles and Bridges; and ſubject to the common Services of the Kingdom. And that the Earls and Chief *Thanes* did hold their Lands by Knights or Military Service, appears by the Reliefs of the Earls and *Thanes*, expreſt in the Laws of King *Cnute*, in Sir *H. Spelman*'s Councils. So that if all the Perſons who held thoſe Lands, owed them wholly to the King's Bounty, it ſeems plain to me that they muſt likewiſe owe their Places in the great Council to the ſame Original.

F. I think what you have now farther urged will be of no great Moment againſt my Opinion; for as to the Authority you bring from the Addition to that Law of *Edward* the Confeſſor, it is plain by the Word *Barones*, that it was added long ſince that Time, that Word not being commonly in Uſe, till ſome Time after the *Norman* Conqueſt. But letting that paſs, it is plain by the reſt of the Law, if you would have been pleaſed to have read it out, that theſe *Heretoches* (here called Barons) were no other than ordinary Gentlemen, or *Thanes* (which then anſwered the Word Barons. And theſe (as this Law it ſelf expreſly tells us) were choſen by all the Freemen in the Folcmote, or County-Court. And therefore though I grant they might be Men of Eſtates, yet there was no Neceſſity of their being Lords, or Noble by Birth; nor is it likely that the People would have choſen their Earls, or any other of the like Order, when they had ſufficient Choice of *Thanes* or Gentlemen in their own Countrey, to command the Military Forces of it. And though it is true theſe Gentlemen are called Nobles, and remarkable Wiſe Men, yet this (according to your own ſhewing) doth not exclude others, and thoſe of a far different Profeſſion, *viz. Counſellors, Lawyers*, and *Judges*, all which, you ſuppoſe had then Places in the Great Council, as they have now in the Lords Houſe. And if this Word might comprehend

both Swordmen and Lawyers, I cannot ſee why it may not alſo take in the better and richer ſort of Citizens and Magiſtrates, who in that Age, were elected by their reſpective Corporations: And I have already proved that theſe were called *Sapientes* in other Countries; and I ſee no reaſon why they may not have been called ſo here too. But that the King's Judges and Counſellors could have no Votes in the *Saxon* Great Councils, I have already given a ſufficient Reaſon to the contrary.

I ſhall now farther ſhew you, That the Cities and Boroughs in the *Saxon* Times being ſo much more numerous and conſiderable than they are now, muſt needs have had (according to the Cuſtom of thoſe Times) a conſiderable Share in thoſe Great Councils, ſince in them conſiſted a great Part of the Strength and Riches of the Kingdom; and were many more than they are at this Day; for *Bede* tells us in the beginning of his Hiſtory, *That there were in* England *long before his Time, Twenty Eight Famous Cities, beſides innumerable Caſtles, and walled Towns of Note*; many of which, though now extremely decayed, or quite ruined, were then very conſiderable, the greateſt and richeſt Part of the Nation inhabiting in thoſe Times for the moſt part in Cities, or great Towns, for their greater Benefit or Security; and the greater Part of the Lands of *England* in the *Saxon* Times, and long after, lay uncultivated, and over-run with Foreſts and Bogs: So that the Inhabitants of thoſe Cities and Boroughs being then ſo conſiderable for Eſtates in Lands, as well as other Riches, could not be excluded from having Places both in the *Britiſh*, or *Saxon* Great Councils. What Man of Senſe can believe, that the Ancient and Potent Cities of *London*, *York*, *Canterbury*, *Lincoln*, &c. ſhould ever be excluded from having any Hand in the Great Conſultation about giving Money, and making Laws, and for the Publick Defence of the Kingdom in the *Saxon* Times, any more than they are now? And therefore we find, that in all the Kingdoms of the *German*, or *Gothick* Original, the Chief Cities and Towns have ſtill ſent Deputies to the Diets, or Aſſemblies of Eſtates, as I ſaid but now.

Vi. Hollinſh. *Chro.* p. 192, 193. *where he ſufficiently proves this Aſſertion from divers Ancient Authors.*

In the next Place, though I do not aſſert, that there were Knights of Shires before the Conqueſt; yet I am not convinced that there were none. For though I confeſs the Treatiſe you mention, appears to have been written ſince the coming in of the *Normans*, yet the Subſtance of it muſt have been much older than the Times of *Edward* III. and *Richard* II; or elſe certainly King *Henry* IV. or his Chancellor for him, would never have been at the Trouble of tranſmitting a Copy of this ſaid *Modus* into *Ireland* under the Great Seal, which is thought to incroach ſo much on the Prerogative, had he not been very well informed of the Antiquity, as well as Authority thereof. And therefore it might very well be written about the Time of *Henry* III. from ſome Ancient Hiſtorians and Records, not now Extant, though the Copies we have of it, may be of no longer Standing, than the Time Mr. *Selden* mentions.

But admitting that there were no Knights of Shires before the Conqueſt, and though the *Thanes* (who I ſuppoſe made the greateſt Figure in the *Wittena Gemotes*) were not Earls, or chief *Thanes*, that is, of the Greater Nobility, yet they were great Freeholders, and though Commoners, yet Gentlemen, and of the Leſſer Nobility, in the ſame Senſe as Gentlemen, or Knights of Shires are now. And though not elected by the Countries, yet might be as well eſteemed their Repreſentatives, as they are now of Freeholders under 40 *s. per Annum*, Leaſeholders and Copy-holders for Years, who have no Votes at the Election of Parliament Men; whereas theſe *Thanes* were then the chief (if not the only) Poſſeſſors of all the Freehold Eſtates in the Kingdom.

Nor is it any material Objection to ſay, that theſe *Thanes* might at firſt owe thoſe Eſtates to the Grant of the Firſt *Saxon* Kings, and might alſo after a Sort hold their Eſtates of them as Heads of the Commonwealth, by ſuch Services as were ſettled by Publick Laws; yet does it not therefore follow, that they owed their very Right of coming to the Great Council wholly to the King's Favour. For in the firſt Place it is to be conſidered, that though the Firſt *Saxon* Kings conquered this Iſland from the *Britons*, yet thoſe that aſſiſted them being only Voluntiers, the Chief Officers or Commanders of them might not only deſerve, but alſo capitulate for their Shares in the Land ſo conquered. And theſe being given out by the King, according to each Man's Quality, Condition, or Deſert, might

might conſtitute thoſe who were called the King's *Thanes*; as thoſe who held likewiſe under them, were the Middle *Thanes* or Vavaſſors; ſuppoſing (till you can prove the contrary) that theſe had Places in the Great Council, as well as the other; and you might as well argue that they could have no Places there, but by the Favour of their Lords. Whereas I have already proved, that an Eſtate of Five Hides in Land, of whomſoever holden, made a *Thane* or Nobleman of the Inferior Rank: And we find by the ſame Laws of King *Athelſtan*, his *Weregild*, or Price of his Head, was valued but equal with that of a Maſs *Thanes* or Prieſt, (*viz.*) at Two Thouſand *Thrymſas*. So that a ſufficient Eſtate in Land, did not only make a Man a Gentleman, but alſo give him a Place in the Great Council. And there were beſides all theſe ſeveral *Alodarij*, who held their Lands, diſcharged from all Services, and could ſell or diſpoſe of them without the Conſent of the King, or any other inferior Lord, and are thoſe often mentioned in *Domeſday*-Book, *qui potuit ire cum terra quo voluit*. Nor is your Argument concluſive, That becauſe in thoſe Times, as well as now, all Lands were held either mediately or immediately of the King, and were chargeable with thoſe Three general Services you mention for the Publick Safety and Good of the Kingdom; that therefore not only all Mens Civil Properties, but alſo their Right of coming to the Great Councils, muſt wholly depend upon the King's Will: Since I have already proved, that the firſt *Saxon* Kings by their Conqueſt of the Kingdom, could not acquire the ſole Property of all the Lands thereof to themſelves, though they might be made uſe of as Publick Truſtees, to diſtribute them according to thoſe Mens Qualities and Deſerts, who had helped them in the Conqueſt. So that when they were once poſſeſſed of ſuch Eſtates, they had immediately thereupon a Right to a Place in the Great Council, the Burthen of the Government lying chiefly on ſuch as had Eſtates in Land.

And that many others beſides the Kings *Thanes*, or Great Lords, had Places in the Great Council of thoſe Times, appears as well by the Name of *Mycel Synods*, or *Wittena-Gemots*, which are rendred by our Ancient Gloſſariſts *Numeroſa*, or *Populoſa Conventio*; as alſo the Titles, and Concluſions to divers of the Titles of thoſe Great Councils in the *Saxon* Times, where are often mentioned after the *Comites, & Proceres Terræ, aliorum fidelium infinita multitudo*, which muſt certainly take in many more than the King's *Thanes*, Judges, or other of his Great Men, who were then but a few in Compariſon of all the reſt of the Freeholders of *England*.

M. I will not longer diſpute the Probability of what you ſay; all the Difficulty lies in the Proof of the Matter of Fact. For in the firſt Place I deny that any other of a leſs Degree than the King's *Thanes*, or Chief Tenants, had any Places or Voices in the old *Engliſh* Councils. Nor can you find (as you your ſelf are forced to confeſs) in our *Saxon* Laws, or Ancient Hiſtorians of thoſe Times, any Repreſentatives of the Common People mentioned; ſuch as are now, much leſs Citizens or Burgeſſes for any City or Borough in *England*. And therefore what you ſay concerning the Riches or Power of the Cities and Towns before the Conqueſt, though perhaps it might be true, yet doth it not therefore follow, that they muſt then ſend their Repreſentatives to the Great Councils. Nor is it any Argument to prove that they did, becauſe great Cities and Towns do or did lately ſend Deputies to the like Aſſemblies in other Countries, ſince our Government might not only Originally differ in that from theirs, but that alſo the ſending of thoſe Deputies might be granted by ſome later Princes, long ſince the Time of the firſt Beginning of thoſe Kingdoms, and I do believe will prove ſo, if cloſely look'd into.

F. I think your Reply hath no more Weight in it, than what you have already urged: For in the firſt Place it lies upon your Side to prove, that none but the Kings or Chief *Thanes*, had any Places in the Great Councils of thoſe Times; and when you can prove that, you may do ſomething.

But what I have now brought to prove the great Antiquity of our Cities and Boroughs in *England*, is not ſo little to the Purpoſe as you would make it; ſince it confirms that Right of Preſcription, which all Ancient Cities and Boroughs in *England* do claim of ſending Members to Parliament; and therefore pray ſee what Mr. *Lambard*, a Perſon whom all the Learned own extremely knowing in the *Engliſh Saxon* Government, tells us on this Subject, in his *Archeon* in theſe Words. *Pag.* 256, 257, &c.

" That

" That whereas in the Beginning of the Laws, (*viz.* thoſe made by the *Saxon* " Kings he there mentions) all the Acts are ſaid to paſs from the King and his " *Wiſe Men*, both of the Clergy and Laity, in the Body of the Laws, each " Statute being thus; *And it is the Advice of our Lord, and his* Wiſe Men. So " as it appears that it was then a received Form of Speech, to ſignify both the " Spirituality, and Laity (that is to ſay, the Greater *Nobility*, and the Leſs, or " *Commons*) by this one Word *Witena*, i. e. *Wiſe Man*.

" Now as theſe written Authorities do undoubtedly confirm our Aſſertion of " the Continuance of this manner of Parliament, ſo is there alſo unwritten Law " or Preſcription, that doth no leſs infallibly uphold the ſame. For it is well " known, that in every Quarter of the Realm, a great many Boroughs do yet " ſend Burgeſſes to the Parliament, which are nevertheleſs ſo Ancient, and ſo " long ſince decayed, and gone to Nought, that it cannot be ſhewed that they " have been of any Reputation at any Time ſince the Conqueſt, and much leſs " that they have obtained this Privilege by the Grant of any King ſucceeding " the ſame. So that the Intereſt which they have in Parliament groweth by an " Ancient Uſage before the Conqueſt, whereof they cannot ſhew any Beginning; " which Thing is alſo confirmed by a contrary Uſage in the ſelf ſame Thing; " for it is likewiſe known, that they of Ancient Demeſne, do preſcribe in not " ſending to the Parliament; for which Reaſon alſo, they are neither Contri- " butors to the Wages of the Knights of Shires, neither are they bound by ſundry " Acts of Parliament, though the ſame be generally Penned, and do make no " Exceptions of them. But there is no Ancient Demeſne, ſaving that only which " is deſcribed in the Book of *Doomſday*, under the Title of *Terra Regis*, which " of Neceſſity muſt be ſuch as either was in the Hands of the Conqueror him- " ſelf, who made the Book, or of *Edward* the Confeſſor, that was before " him. And ſo again, if they of Ancient Demeſnes, have ever ſince the Con- " queſt preſcribed not to elect Burgeſſes to the Parliament, then (no doubt) there " was a Parliament before the Conqueſt, to the which they of other Places did " ſend their Burgeſſes.

From whence we may conclude, that the Learned Author did not only believe that the Lords, but that alſo the Inferior Nobility, and Repreſentatives of Cities and Towns, were included under the Word *Wites*, and alſo that theſe Places claimed that Priviledge by Preſcription, and not by Grant of any King ſince the Conqueſt, or before.

M. I ſhall not deny but Mr. *Lambard* was a Learned Antiquary, yet there are others, more in Number, and perhaps of greater Learning, who do ſuppoſe, that no Cities or Boroughs ſent Burgeſſes to Parliament, but ſince the Conqueſt; tho' I confeſs the Time is not exactly agreed on; but whenever they began to appear there, it is certain they could have no Right of coming, but from the King's Summons or Grants; ſince none but ſuch Cities or Towns, that held of the King *in Capite*, had anciently any Place in thoſe Aſſemblies; nor of them neither any other, but thoſe whom the King pleaſed to call. And from thence proceeds that great Variety we find in the Liſt of thoſe Towns, which ſend Members to Parliament. But I ſhall omit ſpeaking any Thing farther of this at preſent.

B. A. P. Pag. 38.

But as for thoſe middle, inferior *Thanes* or *Vavaſſours* (as they were afterwards called) whom you ſuppoſe to have made ſo great a Figure in the *Saxon* Great Councils, I do not believe that they had any Votes there; and I hope I ſhall be able to prove to you by and by, that none but the King's Tenants *in Capite* appeared in thoſe Meetings, from the Time of *William* the Conqueror, to the 49th of *Henry* III. Now if it be true (as you ſuppoſe) King *William* made no material Alterations in the conſtituent Parts of the Great Council of the Kingdom, after his Conqueſt of it, it will likewiſe follow, that the ſame Sort of Perſons, *viz.* Tenants by Knights Service, were the only Members of it before the Conqueſt too. But if you have any expreſs Authorities, out of our Ancient *Saxon* Laws or Hiſtories, to prove that the Commons appeared at the *Wittena Gemotes* in the *Saxon* Times, pray let us ſee them.

F. I ſhall perform your Command immediately; but in the firſt Place give me leave to tell you, that what you have ſaid concerning Cities and Towns not ſending Burgeſſes to Parliament, till after the Conqueſt, is a great Miſtake, built upon a falſe and precarious Hypotheſis, that they all held *in Capite* of the King; the

the contrary of which, I ſhall make out, when I come to treat of that Queſtion. So likewiſe is it as precarious, that none but the King's Tenants *in Capite*, had any Votes in our Great Councils, in the Times immediately ſucceeding your Conqueſt, till the 49th of *Henry* III. and that therefore it muſt have been ſo before the Conqueſt. For as I own that King *William* made no material Alteration in the Government of the Kingdom, after his Entrance, ſo I likewiſe affirm, that as well after, as before that Time (if not Knights of Shires, yet) all the *Thanes* or *Barons*, i. e. great *Freeholders* of *England*, had Places in that Aſſembly before the 49th of *Henry* III.

But to proceed to the Authorities you deſire; I ſhall begin with the Firſt, and moſt Ancient General Council we have left us in the *Saxon* Times, *viz.* that which was held at *Canterbury A. D.* 605, by King *Ethelbert*, not long after the Settlement of Chriſtianity in this Iſland; which is Recorded by Sir *H. Spelman* in his *Britiſh* Councils, in theſe Words; *An. Incarnationis Dominicæ* 685. *Æthelbertus Rex in fide Roboratus Catholica una cum Berta Regina filioque ipſo Eadbaldo, ac reverendiſſimo præſule Auguſtino, cæteriſque optimatibus Terræ Solenitatem Natalis Domini Celebrant Cantuariæ; Convocato igitur ibidem Communi Conſilio tam Cleri quam Populi*; Whence you may obſerve that the People then made a conſiderable part of the great Council from the very Beginning of the *Saxon* Times. Page 126.

M. Pray, Sir, will you give me Leave to Anſwer your Queſtions, one by one as you go, for fear I ſhould not only forget them, but alſo tire you with too long a Speech. In the firſt Place therefore give me Leave to tell you, that you are very much miſtaken to ſuppoſe, that by the Word *Populus*, is here meant the common People, or Vulgar; Whereas, when *Clerus* and *Populus* are uſed together, in our Ancient Writers of thoſe Times, it ſignifies no more than a Common Council of the Clergy, and People or Laity, and not the Common People; for then the *Lords*, or Great Men would have been quite left out of this Council, as certainly they were not; and ſo when *Clerus*, and *Populus*, are uſed together, and thus contradiſtinguiſhed, then they are expreſſive of Two different Eſtates or Conditions of Men or Chriſtians, the Clergy, and Laity or ſecular Men; and thoſe were the *Optimates Terræ*, the chief Men of the Land before expreſſed. Neither was this Council held under a ſole *Saxon* Monarch, but under *Ethelbert* King of *Kent* only; and that but Eight Years after *Auguſtin*'s coming hither, and above Two Hundred Years before the Seven Kingdoms were united into one Monarchy. *B. A. P. Pag.* 4.

F. I am not at all concerned at this Anſwer, ſince I can prove, that by the Word *Populus* muſt be here underſtood ſomewhat more than *Kings*, *Noblemen*, and *Judges*, viz. the Repreſentatives of the *Commons* likewiſe; or elſe the *Saxon Witena-Gemotes* were not what their Titles ſpeak them to be, Common, or General Councils of the whole Kingdom; that is, of all the Eſtates or Orders of it there, but only a Convention of the Biſhops and Great Lords. And therefore if the Word *Clerus* did then comprehend all the Clergy, both Superior and Inferior, *i. e.* as well the Biſhops as Abbots, Priors, Deans and Clerks, for the Secular Clergy, and Cathedral Chapters, *&c.* I pray give me a Reaſon why the Word *Populus*, when put alone, muſt be wholly confined to your *Earls*, or Chief *Thanes*, and may not alſo take in the Middle or Leſs *Thanes*, Freeholders, or Lords of Townſhips, and the Repreſentatives of Cities and Borough Towns; and why not with as much Reaſon, as that the Word *Populus* amongſt the *Romans*, took in the whole Body of the People of *Rome*, both *Patricians*, and *Plebeians*, when aſſembled in their *Comitiis Centuriatis*, to make Laws, or create Magiſtrates. The reſt of your Argument is not very material; for though I grant this Council was held before the Heptarchy was united into a Monarchy, yet I think it is very eaſy to prove, that as all the *Saxon* Kingdoms conſiſted of ſeveral Nations of the ſame Language and Original, ſo were they likewiſe under the ſame Form of Government: And that Councils conſiſted of the ſame conſtituent Members, as I ſhall prove to you from the Kingdom of the *Weſt Saxons*, from which was the Foundation of our preſent *Engliſh* Monarchy. And for this I ſhall give you the Authority of *Will.* of *Malmesbury*, and *H. Huntingdon*, (who 'tis highly probable) had ſeen the Ancient Hiſtories and Records of thoſe Times) and they both agree in the Relation of the Depoſition of *Sigebert*, King of the *Weſt Saxons*, for Tyranny and Cruelty, *Anno* 754; the Words are remarkable, which pray

read; *Unde in Anno ſecundo ipſius Regni congregati ſunt Proceres, & Populi Totius Regni & provida deliberatione, & unanimi conſenſu omnium expulſus eſt a Regno & Kinewulfus ſatus ex Regio ſanguine electus eſt in Regem*; where you may obſerve a plain Difference made between the Higher *Nobility*, here called *Proceres*, and the Repreſentatives of the People, here ſtiled *Populi*; as alſo from another Authority of a Great Council, held under the ſame King *Æthelbert*, as it is mentioned by *Roger Hoveden*, Domeſtick to King *Henry* II. in the Second Part of his Annals; where among the Laws of King *Edward* the Confeſſor, and which he writes to have been confirmed by King *William* I. you will find under the Title *de Apibus, & de aliis minutis Decimis*, (which are there ſaid to be given to the Clergy by former Kings, and particularly by this King *Ethelbert*) theſe Words; *Hæc enim Sanctus Auguſtinus prædicavit, & docuit & hæc conceſſa ſunt a Rege, Baronibus & Populo.* So that if *Populus* here doth not ſignify an Order of Men, diſtinct from the Barons or Great Lords, it would have been a Tautology with a Witneſs.

M. I muſt confeſs, if this Authority you now urge, had been as Ancient as the Time to which it is aſcribed, it would be of ſome Weight; but it appears by this Word *Baronibus* (not uſed in *England* till after the Conqueſt) that it was added long after that Time (by ſome ignorant Monk) to the Confeſſor's Laws, and therefore will not prove that for which you bring it, *viz.* That the *Vulgus* underſtood for the People or Commons, in the Senſe they are now taken, had any Place in the *Saxon* Great Councils.

B. A. A. Page 297, 298. But make the moſt of it, this was but the Confirmation of a Law made by King *Æthelbert*; but how, and by what Words the Legiſlators were expreſſed near Five Hundred Years after the Law was made; or how they were rendred in *Latin* after the coming of the *Normans* tranſiently, and without Deſign to give an Account of them, cannot be of much Validity to prove who they were; and that the Laws of King *Edward* were made, or at leaſt tranſlated into *Norman Latin*, after the *Norman* Conqueſt, appears by the Words *Comites*, (beſides the *Barons* already mentioned) *Milites*, *Servientes*, &c. all *Norman* Words (uſed in thoſe pretended Laws) and not known here, till their Coming hither. He that will aſſert any Thing from a ſingle uncouth Expreſſion in one Caſe, and upon one Occaſion only, brings but a ſlender Proof for what he ſays; ſo will any Man think, (becauſe 'tis ſaid in one of King *Edward*'s Laws, (and perhaps no where elſe, concerning this King's Coronation) *quod debet in propria perſona coram Regno, & Sacerdotio & Clero, jurare ante quam ab Archiepiſcopis, & Epiſcopis Regni coronetur*;) That the Prieſts were not Clergymen, nor the Clergymen Prieſts; and that the Archbiſhops and Biſhops were neither. Many other uncouth Expreſſions do often occur in the old Monks, which are to be interpreted according to the common Uſage and Practice of the Times in which they are delivered. And therefore ſeeing before the Time of the Conqueſt, and for Two, or near Three Centuries of Years afterward, the Commons (as at this Day underſtood) were not called, nor did come to Great Councils or Parliaments, as I ſhall prove when I come to ſpeak of thoſe Times: So that by *Barons* muſt be here meant the Great Barons, and by *Populus*, the *Communitas Angliæ*, or which was then all one, the *Communitas Baronum*, the Leſs Barons, or Tenants *in Capite*; and the Senſe of the Words is farther confirmed by ſeveral undeniable Authorities; wherein, by the *Communitas Populi*, muſt be underſtood not the Community of the People or Commons, but the whole Body of the leſs Tenants *in Capite*.

But to give you an Anſwer why the Word *Populus* could not comprehend all Sorts of People among the *Saxons*, as it did among the *Romans*, but only the Nobility, (who were then, properly ſpeaking, the only Freemen) is this, that none but the Nobility poſſeſſed any Lands in Fee-ſimple; all the reſt of the meaner Sort of People (then called *Cheorl Folk*) holding theirs in Villanage under their Lords or *Thanes*, being no better than meer Villains, or Coſtagers, and who were all bound to the Good Behaviour, every Tenth Family being bound one for another, in the *Sheriff*'s *Torne*, or Court of *Franc-Pledge*, under their Head, or Tenth Man, called the Tything-Man, who was to anſwer for them. So that the Commons of *England* were not ſuch a Free People, nor had any Share in the Government, as ſome ſuppoſe, there being, I believe, no ſuch Perſons as our Yeomen or Farmers in thoſe Days.

F. I ſhall, I hope, take off this Objection againſt my Signification of the word *Populus*. Perhaps this Law might very well be tranſcribed from ſome old Copy of King *Æthelbert*'s Laws not now extant, and in which there might be the Word *Thanes*, inſtead of *Baronibus*, which is but a Tranſlation of it, in the Senſe in which it was uſed not long after the Conqueſt.

Nor is it true which you affirm, that the Word *Barones* was never in uſe before the coming in of the *Normans*, in ancient Charters; as I ſhall prove to you by this Charter of King *Edgar*, to the Abby of *Weſtminſter*, containing a Confirmation of their ancient Charters and Privileges, collected by the aforeſaid *Sulcardus*, a Monk of *Weſtminſter*, as it is to be found in the *Cottonian* Library; the Charter it ſelf is long, but concludes thus, *In Concilio habito infra Baſilicam* Weſtmonaſt. *Præſidente ſecum Filio ſuo Edwardo, & Archiepo Dunſtano, & univerſis Epiſcopis & Baronibus ſuis*; where you may ſee that the Word was not unknown before the Time of *William* I. And I could give you more Inſtances of other Kings Charters, where the ſame Word is uſed before the Conqueſt, were it worth the while to trouble you with them. *Ex Cartulario Cœnob. à Weſt. Bib. Cotton ſub Effigie Fauſtinæ. C. 3. f. 7.*

And ſo likewiſe *Populus* for *People*, or *Folk* in the *Saxon*; Yet take it (as you ſuppoſe) to have been writ not long before the Time *Hoveden* writ his Hiſtory, (which was above 80 Years before the 49th of *Hen.* 3.) This Author, or whoever elſe added this Paſſage to this Law about Tythes, did then ſuppoſe, that according to the Cuſtom then uſed, the People or *Commons* had Repreſentatives in thoſe Aſſemblies; which I ſhall prove from your own Senſe of theſe Words; for if the Word *Populus* ſignifies here another Sort of Men different from the chief *Thanes* or Lords, then this Word *Populus* muſt neceſſarily ſignify ſome that were Commons, and not Lords, by your own Conceſſion, and who alſo muſt repreſent others beſides themſelves. But it is highly improbable, that by this Word *Populus* ſhould be meant the *Communitas Angliæ*, or the *Communitas Baronum*; for then if the Word *Baronum* would have included all the Tenants *in Capite*, both great and ſmall, to what Purpoſe ſhould the Word *Populus* have been added at all? Therefore I am ſo far from believing this way of expreſſing the ſeveral Eſtates of the Kingdom, to have been a Monkiſh Blunder, (as you ſuppoſe) that it was rather a common and ordinary way of Expreſſion among the Writers of thoſe Times, as well in Records as Hiſtories, who then very well knew the People or Commons, to be an Eſtate, or conſtituent Part of the Common Council of the Kingdom, quite different from the Lords; and in which Senſe it is recited in an ancient Charter of King *John*, that he being divorced, the new Queen was crowned, *de communi aſſenſu & concordi Voluntate Archiepiſcoporum, Epiſcoporum, Comitum, Baronum, Cleri & Populi totius Regni*; Where by *Clerus* it is plain muſt be meant the inferior Clergy repreſented by their Proxies in this great Synod or Parliament; and by *Populus* was underſtood the People or Commons, likewiſe preſent by their Repreſentatives; or elſe the Words *Clerus* and *Populus* had been idle Tautologies in this Record. And in the like Senſe it is alſo uſed by *Matt. Paris*, in the 9th of *Hen.* III. *preſentibus Clero, & Populo, cum Magnatibus Regionis*; Where this Author makes a plain Diſtinction between the *Magnates*, and the *Populus*; which had been altogether in vain, if the Word *Magnates* would have comprehended all your greater or leſs Barons, or Tenants *in capite*. *Rot. Cart.* 5. Johan. *m.* 5. *n.* 33. *F.* 223.

But I ſhall in the next Place proceed to that great Synod, or Council, that was called by King *Edward* the Elder, *Anno Dom.* 905. and is mentioned by *Simeon* of *Durham*, and other Authors quoted by Archbiſhop *Parker*, the Compiler of the *Britiſh* Antiquities, in theſe Words, *Plegmundus Cantuarienſis Archiepiſcopus, una cum Rege Magnifico cognominato, Edwardo ſeniore Conſilium Magnum Epiſcoporum, Abbatum Fidelium, Procerum &* Populorum, *&c. convocavit*. Which Synod, or Council, was called to divide the large Dioceſes of *Wincheſter* and *Sherburn* into Five other (as I have already told you); where you may plainly ſee the Words *Fidelium & Populorum*, put diſtinct from the Word *Proceres*, if we take that Word to ſignify only the greater Nobility.

I ſhall now conclude with a few Words in Reply to your Anſwer, why the Word *Populus*, could not among the *Saxons* take in all Sorts of People, as well as amongſt the *Romans*; for I cannot take it as a ſatisfactory Anſwer,

for theſe Reaſons: 1. Becauſe, tho' I ſhould grant that the vulgar Sort of People were greater Slaves than they are now, and that they had no hereditary Properties in their Eſtates, but at the Will of their Lords; yet does it therefore follow, that all the Freemen of the Kingdom were Noblemen or Gentlemen, or elſe Villains, as now underſtood? Since *Nitardus* tells us in the Place abovementioned, that there were Three Sorts of People among the *Saxons*, *Edelingi*, *Frilingi*, & *Lazzi*, i. e. Gentlemen or Noblemen, Freemen, and Slaves or Villains; and this middle Sort of Men might alſo poſſeſs Lands in *Allodio*, or Free Tenure, tho' they did alſo depend upon greater Men for Protection, and ſeem to be thoſe who were after the Conqueſt called in *Doomſday Book*, *Commendatii*, i. e. ſuch, who tho' they lived under the Protection, and within the Diſtrict of ſome great Man, Lord or Patron; yet as Sir *Hen. Spelman* tells us, were free both as to their Perſons and Eſtates, not as ſworn to, or holding of any but the King. And beſides theſe there were alſo great Bodies of Men in Cities, and Burgh Towns, and thoſe very conſiderable for Eſtates and other Riches, who tho' not nobly born, and yet being Freemen, it was but reaſonable that they ſhould have their Repreſentatives in Parliament, as well as the former.

P. P. H. Pag. 56.

M. I ſhall not at preſent diſpute the Matter farther with you concerning the Word *Populus*, ſince I ſhall refer ſpeaking more about it, till I come to the Times after the Conqueſt. And therefore to return to the Matter in hand; had you but read a little farther in the ſame Leaf, in the Author you have cited, you might have found who they were, whom King *Edward* the Elder called to this Council; The Words are theſe, *Edwardus Rex Synodum Prædictam Nobilium Anglorum congregavit cui preſidebat Plegmundus.* Here your own Author tells us in few Words, the meaning of a long Title of this Synod now mentioned, *viz.* that the Biſhops, Abbots, *Fideles*, *Proceres*, & *Populus*, were all *Nobiles*, Noblemen, that is, the Eccleſiaſticks and Laics, or the Biſhops and Lay-Nobility, as I ſhall make more evident hereafter; and not the *Vulgus*, Commons, or ordinary Sort of People.

B. A. P. Pag. 7.

And to this Effect *Malmsbury*, and the Manuſcript in the *Bodleian* Library cited by Sir *William Dugdale*, and Mr. *Somner*, from the Treaſury of the Records and Evidences of the Church of *Canterbury*, cited by Sir *H. Spelman*, do all report of this very Council, That *Edwardus Rex congregavit Synodum Senatorum Gentis Anglorum cui præſidebat Plegmundus*, &c. That King *Edward* convened a Synod of the Senators (in the *Saxon*, Aldermen, of the *Engliſh* Nation) that is, ſuch as were uſually called to ſuch Councils, which were only the Nobles, and great Men, for ought yet appears from this Inſtance. But what if after all, there was never any ſuch Synod called, and conſequently no ſuch Title to it? For it was ſaid to have been aſſembled, by reaſon of a chiding Letter from Pope *Formoſus*; now this *Formoſus* died *Anno* 895. that is, Ten Years before this Council was ſuppoſed to be called.

F. I ſee this Authority galls you, therefore I do not blame you to do what you can to be rid of it; but I ſhall not give it up for all that. For that this Word *Populorum*, then ſignified all the Lay-Perſons, who were actually *Noblemen*, that is, of the greater Nobility, I think is a great Miſtake. For to what Purpoſe are all theſe different Words here heap'd together, ſince the Word *Proceres* had done as well alone in your Senſe, and at once comprehended all thoſe *Lords* or *Noblemen*, that you would only have to be there? But the Word *Nobiles* did not in thoſe Times, neither doth at this Day in any other Countrey but *England*, ſignify none but great Lords, Barons, or Peers; ſince in *Germany* and *France*, and other Countries, every private Gentleman is *Nobilis*. And I think the Middle or leſs *Thanes*, might then as well be called *Nobiles*, as the great Ones. And the *Aldermen*, or other Magiſtrates of great Cities and Towns, might alſo very well be ſtiled *Nobiles*, *ratione Officii*, for the time they acted in that Employment, and might alſo deſerve the Name of Senators, as well as the greater *Aldermen*, or Earls: And if there were no other Lay-Men, but your greater Sort of *Aldermen*, then what becomes of your Chief, or Kings *Thanes*, which you your ſelf grant were conſtant Members of thoſe Councils? Nor indeed doth the Word *Senator* only ſignify ſuch who were *Noblemen* by Birth, ſince among the *Romans* there were Senators of the *Plebeian* as well as *Patrician* Order; as any Man who hat..

but

but read *Lucius Florus*, may quickly ſee. But as for your Exceptions, That there was no ſuch Council, becauſe Pope *Formoſus* is ſaid to have died Ten Years before this Council was called; it is a bold Aſſertion to annihilate a whole Council, becauſe of the Miſtake of the Date, or Time of its meeting, or perhaps in the Name of the Pope, or King then reigning; eſpecially when it was aſſembled upon ſo remarkable an Occaſion, as the erecting of theſe new Biſhopricks, which all our Hiſtorians aſcribe to this Council.

But I ſhall now proceed to another Authority, and that is to the great or Common Council held at *Wincheſter Anno* 853. where you will find in Sir *H. Spelman*'s Councils, as alſo in *Ingulphus*'s Hiſtory, that after the Biſhops, Earls, and other great Men, or *Thanes*, who ſubſcribed to the Law of Tythes, granted by way of Charter there mentioned, wherein theſe following Parties are there mentioned, *Aliorumque* Fidelium *infinita multitudo qui omnes Regium Chirographum laudaverunt, Dignitates verò ſua nomina ſubſcripſerunt.* And the learned Commentator upon King *Alfred*'s Life, publiſhed in *Latin* at *Oxford*, is ſo well ſatisfied, that the Commons were meant by this Expreſſion, that he hath this remarkable Obſervation upon this King's granting of theſe Tythes: *Bis videtur Rex Decimas Eccleſiæ conceſſiſſe. Primum Anno* 844, *& 2° vero* 855. *vel ut alii* 854, *è tota Regione, & cum Aſſenſu omnium Nobilium, & totius Populi.* Where this Author rightly ſuppoſes, that the Words at the Concluſion of this Council, did comprehend the Conſent of the People or Commons, as well as of the Lords, or Noblemen. Or elſe this reciting of this Word *Populus*, as diſtinct from the *Nobiles*, had been altogether in vain. *Pag.* 350.

So that tho' I do not affirm, that the meer Vulgar, or *Plebeian* Sort of People did appear perſonally in the great Council of thoſe Times, any more than they do now, yet they were there by their Repreſentatives, *viz.* either by Knights of Shires, as now, or elſe the chief *Thanes*, or Freeholders of the Kingdom; as alſo by the Aldermen, or chief Burgeſſes of great Cities and Towns, who I ſuppoſe did then repreſent thoſe Politick Bodies, ſince all Men could not appear there in Perſon.

But I ſhall give you another Authority out of the ſame Author, *viz.* Archbiſhop *Parker*'s *Britiſh* Antiquities, where when he relates the calling of the Council of *Calne*, for the turning of Married Prieſts out of Monaſteries, and Cathedral Churches, and putting Monks into their Places; He tells us a remarkable Accident that then happened, *viz.* The falling down of a Room where the Council was aſſembled: So that there fell together all of a ſudden, (pray take the Words themſelves out of the Authors there cited) *Præſules, Proceres, Equites, Nobiles, pariter & Ignobiles Corruerunt.* So that you ſee here were other Sorts of Men preſent in this Council, beſide the *Præſules*, (i. e. *Biſhops* and *Abbots*); and the *Proceres*, (i. e. the *Earls* and *chief Thanes*), *viz.* the *Knights*, or *Inferior Thanes*, Noblemen or Gentlemen; as alſo *Ignobiles*, thoſe that were not Noble by Birth, ſuch as were the Repreſentatives of Cities and Boroughs. And of this Opinion the Archbiſhop himſelf ſeems to be; for at the End of this Relation he makes this Remark; *Sed nec hujus domus in quâ omnium Ordinum, tam Conſpicui Clariq; viri, Conſulto Convenerunt tam repentina ruina ope Diabolica carere potuit*; where by *Omnium Ordinum*, he muſt certainly mean the Three Eſtates of the Kingdom, in the ſame Senſe as the Word *Ordines* is uſed by *Camden*, and other *Latin* Writers, who call our Parliament *Conventus Ordinum*, that is, the Aſſembly of Eſtates. *Pag.* 87.

M. I pray give me leave to anſwer this Authority before you proceed farther; I muſt beg your pardon, if I cannot believe that all the Perſons whom the Hiſtorian relates to have periſhed by this Fall of the Council Chamber, to have been all of them actual Members of that Aſſemby, ſince there might have been there divers Perſons, who tho' of an inferior Rank, might have been preſent as Auditors or Lookers on; it not being then the Cuſtom to hold thoſe Councils ſo privately, as we do now; ſo that divers of the common or ordinary Sort of People, called here *Ignobiles*, and perhaps of the inferior Gentry too, being there, might all partake of this common Ruin, and ſo pay dear for their needleſs Curioſity.

F. I muſt beg your Pardon if I do not aſſent to your Opinion in this Matter; for I cannot believe (unleſs you can ſhew me very good Authority for it) that ever the common People or *Vulgus*, in the Senſe you take them, were let in only to gaze at ſuch Aſſemblies. For what Room could have contained ſo great a Crowd?

and if they were in those Days so great Slaves, as the Gentlemen of your Opinion please to make them, it is not likely that they should be admitted to crowd into the Great Councils then, any more than now, when you allow them more Liberty, and greater Privileges than they then enjoyed. And therefore I think I may very well stick to the Archbishop's Opinion, who supposes them to have been the whole Assembly of the Three Estates, who were all involved in this Ruin.

But letting this pass, I shall now give you an Authority of a Great Council held under King *Ethelred*, which will farther confirm our Sense of the Word *Populus*; which Council you may see in the First Volume of *Monasticon Anglic.* contains a Concession and Confirmation of divers Privileges to the Monastery of *Wolverhampton*, in these Words; *Hæc decreta sunt Sigerichi Archiepiscopi in placito coram Rege Ethelredo, & Eboracensi Archiepiscopo, & omnibus Episcopis, Abbatibus Regionis Britanniæ, seu Senatoribus, Ducibus, & Populo Terræ:* Where it seems plain to me, that the *Populus Terræ* are here put as a distinct Order of Men from all the rest aforegoing.

Vol. 1. *Fol.* 988. *Col.* 2.

To come now to the Time after the *Danish* Invasion, and the Settlement of the Crown upon King *Cnute*, who after he was made King, partly by Conquest, and partly by Election, yet altered nothing of the Ancient Constitution. And therefore *Florence* of *Worcester* tells us, that *Anno* 1017, being the First Year of his Reign, he divided the whole Kingdom into Four Parts, and also *fœdus cum Principibus & omni Populo, Ipse & illi cum Ipso percusserunt:* Where you see the *Populus* or Commons is put distinct by this Author from the Great Lords or Noblemen, here called *Principes*; and this Council is called by Abbot *Bromton* in his History *Parliamentum apud Oxoniam:* And also in his Charter to the Abbey of *Briadricesworth* (since called St. *Edmundsbury*) which is still to be seen in the Office of the King's Remembrancer of the *Exchequer*, it is thus recited, *Ego Cnut, Rex totius Albionis Insulæ, & aliarum Nationum plurimarum, in Cathedra Regali promotus, cum Consilio, & Decreto Archiepiscoporum, Episcoporum, Abbatum, Comitum aliorumque omnium Fidelium eligi Sanciend.:* Whence it plainly appears, that under the Word *Fideles*, was then comprehended other Persons of an Inferior Rank, or Order, to the *Comites*, or Earls, there mentioned; and these could mean no other, than the Representatives of the Commons, whom I have proved to have been present in these Councils.

Fol. 619.

Bromton, Fol. 908.

M. I cannot believe you have yet proved it; for though I have hitherto omitted to give you my Thoughts of this Word *Fidelium*, yet I must now tell you once for all, that by this Word is not here meant, or any where else in our *Saxon* Laws, to be understood the ordinary or common Sort of People, or any that represented them, but only *Tenants in Capite*, or in *Military Service*, which were then called the King's *Thanes*, and were afterward the same with the *Barones Minores*, mentioned in King *John*'s Charter. But I shall plainly prove, when I come to it, that the Word *Fideles*, after the Conquest, signified only the King's Tenants *in Capite*, and were the same with the *Milites*, whom we find to be Witnesses after the Dukes, or Earls, to this Charter of King *Cnute*. And though I confess this Word *Fideles*, doth in a common, or larger Acceptation, signify all such Subjects as owe Fealty and Allegiance to the King; yet in a Strict and Legal Signification (as it is here to be taken) it signifies only the Barons, or Tenants *in Capite*, as Dr. *B.* hath very well shewed us in his Glossary. And therefore Sir *Henry Spelman* himself distinguishes between these and all other Subjects, in these Words, *Interdum Specialiter dicuntur iidem, qui Vassalli, qui Feudo accepto in Patroni Fide, & clientela sunt, Vicissimque Suam ei certi obsequii nomine fidem astrinxerunt.* But indeed it is impossible to understand it in your Sense; for then all that swore Fealty to the King (and so were called *Fideles*) should have had a Place in Parliament, and all the Men in *England* above Fourteen Years of Age, must have been there in Person; which would have been a pretty large Assembly, and such a Multitude as no one Place could have contained them.

Gloss. Tit. Fideles.

Page 156.

F. If what Dr. *B.* in his Preface to his *Norman* History, *page* 157. as also in his Answer to Mr. *P. page* 20. be true, that *Feudal Tenures* owe their Original to *William* the Conqueror, though in other Places he is of another Mind; then certainly this Word *Fideles*, must have been used in a larger Sense, in the Times before the Conquest, and must have extended to all those who were bound to take the Oaths of Fealty and Allegiance, in the *Folkmote*, or *County Court*; as

they did long after the Conqueſt, and ought to do ſo ſtill, if required; and therefore this Word *Fideles* could be then no more limited to Tenants *in Capite* in that Time, than it is now; who, though I grant they could not all be preſent in the Great Council in Perſon, yet they might be there by their Delegates (as well as they are now) and who might alſo conſiſt of far greater Numbers than they now do; ſince we find in the Council of *Wincheſter*, (but now mentioned) that after the *Dukes*, *Earls*, and *Great Men* of the Kingdom, there is alſo added, *aliorumque fidelium infinita multitudo*; which great Multitude ſure muſt have ſignified ſomewhat more than your Chief *Thanes*, or *Tenants in Capite* alone; or elſe the Words *Comites*, and *Proceres*, might very well have comprehended all the Degrees of Laymen: And therefore I deſire you to ſhew me by ſome better Authorities than you yet have done, that before the Conqueſt, the Word *Fideles* muſt needs ſignify *Tenants in Capite*, and no other; but that it did not ſignify only ſo after that Time, I ſhall join Iſſue with you by and by.

I ſhall now proceed to my next Authority, which is from *Ailred*, Abbot of *Rievallis*, who lived not long after the Conqueſt, who in his Life of *Edward* the *Confeſſor*, relating the manner of that King's Election in his Mother's Womb, tells us, *How* Ethelred *his Father called a Great Council about appointing a Succeſſor*, that hereupon ſays thus, *Fit Magnus coram Rege Epiſcoporum Procerumque Conventus, Magnus Plebis* Vulgique *Conſenſus*; where you ſee apparently, that this Abbot made a Diſtinction between the Aſſembly of the Biſhops and Great Lords, and that of the *Plebs*, *Vulgus*, or Common People. *Script. X. Col.* 372.

M. Pray give me leave to interrupt you a little before you proceed to any freſh Authorities. I grant it is true, that the Abbot in the Place you mention, tells ſuch an idle Tale, that this *Edward* was choſen King whilſt in his Mothers Womb, and ſo his Father made the Nobility ſwear Fealty to him before he was Born. He is the only Author of this Legend that I know of; and ſure your ſelf muſt own that it is a little too groſs to be believ'd; and therefore I wonder that you ſhould urge that to me for a ſufficient Authority, for the People or Commons having any Place in the Great Council in thoſe Times.

F. Pray, Sir, obſerve to what Purpoſe I make Uſe of this Authority; it is not to make good the Election of *Edward* the Confeſſor in his Mother's Womb, but only to prove who were then ſuppoſed (when this Abbot writ) to make up the conſtituent Parts of the *Wittena-Gemot*, or Parliament, in the *Saxon* Times, which was then believed by all Men, to conſiſt of the *Clergy*, *Higher Nobility*, and *Commons*, unleſs you can ſuppoſe that the Abbot ſhould mention the Commons by Prophecy. And granting that it was only according to the Cuſtom of his own Time (which the Author of the Preface to the *Decem Scriptores*, makes to be about the middle of King *Henry* IId's Reign) it will ſufficiently prove the Antiquity of the Commons in Parliament, to be near a Hundred Years older than the earlieſt Time you aſſign for it, (*viz.*) the 49th of *Henry* III.

But I ſhall now conclude with the Concluſion to King *Edward* the Confeſſor's Third Charter to the Abbey of *Weſtminſter*, in a great Council held in the laſt Year of his Reign, as you will find it thus recited in Sir *H. Spelman*'s Councils, in theſe Words; *Hanc igitur Chartam meæ donationis & Libertatis, in die dedicationis prædictæ Eccleæ. recitari juſſi coram Epiſcopis, Abbatibus, Comitibus, & omnibus, Optimatibus Angliæ, omnique* Populo *audiente, & vidente*; where by the *Optimates Angliæ*, I think can be underſtood no other than the *Thanes*, or *Freeholders* of all Sorts, as well the Kings as others; as alſo the Deputies of great Cities and Boroughs, the Words being *Optimates Angliæ* (*non Regis*); and though it is not likely that the *Populus*, who are here mention'd to be preſent, ſhould be the Mob, or Common People, only admitted to ſtare and hearken at ſuch a great Aſſembly; yet ſince the Words are in reſpect of them only, *audiente, & vidente*, I ſhall not inſiſt upon the Word *Populus* here, as a Part of this Common Council of the Kingdom. Vid. *Spel.* Coun. Fol. 625.

But yet that the Word *Populus* does oftentimes refer to the Repreſentatives of the Commons, I ſhall conclude from the Anſwer of King *Harold*, the laſt *Saxon* King, to the Meſſage of *William* Duke of *Normandy*, demanding the Kingdom of *England*; and that *Harold*, according to his Promiſe, ſhould marry his Daughter: The Words are remarkable, and therefore pray read them out of *Will.* of *Malmesbury*, who lived near that Time, *Contra, Ille (ſcil. Heraldus) quæ dixi de Puellæ nuptiis referens, de Regno (addebat) præſumtuoſum fuiſſe quod abſque* *Will. Malm. de geſtis Anglorum, Lib. 2. Fol. 52.*

abſque generali Senatus, & Populi Conventu & Edicto alienam illi hereditatem juraverit. Now that by the Word *Senatûs* is to be underſtood the higher Nobility, ſuch as the Biſhops, Abbots, Earls, *&c.* and that is meant by *Populus* the Repreſentatives of the People, we have Mr. *Selden*'s Authority on our Side, who in his Diſſertations on *Fleta*, ſpeaking of the great Queſtion that aroſe in Parliament in King *Edward* III. Reign, concerning King *John*'s Donation of his Kingdom to the Pope, gives their Concluſion to this Debate, in theſe Words, *Ordine univerſi tam generis Hieratici, quam Proceres, & Senatus, & Populus, ſolenni inita deliberatione in Comiciis, illi reſponderunt unanimes, irritam plane fuiſſe Johannis Donationem illam ut pote tam ſine* ordinum *aſſenſu, quam Juramento, in augurati adverſum.* But of this great Authority I ſhall ſpeak more hereafter, when I come to it in order of Time.

Cap. 10. *Fol.* 552.

Since therefore it is apparent that the Commons had a Share in the Great Councils before the Conqueſt (as you call it) I deſire that you would be pleaſed to ſhew me how they came to loſe it after the coming in of the *Normans*, and to be ſo long without it, as until the 49th of *Henry* III, or 18th of *Edward* I. if your Authors are to be credited.

M. I muſt confeſs the Authorities you have brought out of the *Saxon* Councils, would ſeem to be of ſome Weight, were I not ſenſible, that the Monks, who were the only Recorders of theſe Councils, are very ſhort and careleſs in giving a true Account of them; and if we go to the Councils themſelves, we might be ſufficiently convinced, that all thoſe that are ſaid to be preſent at them, could not have any Places or Votes in thoſe Aſſemblies, as Members of them; for in ſome of them (as in this Example) we find the Queen to have been there, and to have given her Conſent to the King's Charters; and yet I ſuppoſe you will not allow the Queen to have been there as an Eſtate by her ſelf, much leſs to have been a Member of any of the Three Eſtates.

The like we may ſay for thoſe Abbeſſes we find mentioned to have been preſent in divers of thoſe Councils, and particularly in that of *Wincheſter*, you ſo much inſiſt upon, wherein Tythes were granted; and theſe are ſaid to have approved of the Royal Charter, as well as any of the reſt; and ſure you do not make Women to have had Voices in our great Councils in the *Saxon* Times. So that it appears plain enough to me, that Perſons being mentioned as preſent in theſe Aſſemblies, or being Witneſſes to Charters there granted, do not make them to have been conſtituent Members thereof. And therefore ſince the *Saxon* Times are ſo dark and obſcure, and ſo little to be collected of Certainty from what we find in the old Monkiſh Hiſtories, and thoſe Fragments of Laws and Charters they have left us, many of which are alſo forged by the Monks; I think it is Time that we paſs over this, to the next Period after the Conqueſt, wherein I doubt not but to ſhew you, that for above an Hundred Years after that Time, none but the *Biſhops, Abbots, Earls, Barons*, or *Tenants in Capite*, were ſummoned by the *Great Council* or *Parliament* till the Time I have ſo often mentioned.

F. I ſee you do all you can to perplex very plain and evident Proofs; For as to the Queen's being often preſent at the great Councils, it is no more than what was uſual in theſe elder Times; and that in *France* as well as here, as any Man that will but peruſe the Charters of ſome of the Kings of *France*, of the Second Race, as they are in Father *Mabilion de Rediplomatica*, may eaſily ſatisfy themſelves; and as for the Abbeſſes, whom we find ſometimes mentioned to have been there before the Conqueſt, they might alſo according to the Cuſtom of thoſe Times have appeared in Perſon in the great Councils, in the Right of their Monaſteries, and of thoſe great Poſſeſſions they held; or elſe they might have been often repreſented by their *Oecomi*, or Stewards, who tranſacted all Buſineſs for them; and your own Civil Law doth always ſuppoſe, that what any Perſons perform by their Lawful Proxies, it is ſaid to be done by themſelves; and that the Abbeſſes and Prioreſſes, did together with the other Spiritual Tenants *in Capite*, join to grant Scutage upon the Knights Fees they held, after your Conqueſt, I ſhall ſhew you before we have finiſhed this Diſcourſe. But ſince I think I have ſufficiently proved the Commons being in Poſſeſſion of this Right by a long Preſcription, I ſhall now leave it to you to prove, that they did not enjoy it after the Conqueſt, and that not until the Time you ſuppoſe.

Pag. 156. *Pag.* 158. *Pag.* 106.

M. Since

M. Since you are pleaſed to impoſe this Task upon me, I ſhall willingly ſubmit to it; and therefore before I proceed farther, pray let us ſee how far we are agreed. In the firſt Place I think you will grant, that till about the latter End of *Edward* IIſt's Reign, there is no expreſs Mention made in our Records, or Hiſtorians, of any Repreſentatives for the *Commons*, either by *Knights* of *Shires*, *Citizens* or *Burgeſſes* of Towns; much leſs the Word *Commons*, mentioned by them in the Senſe it is now taken: For if we peruſe *Ingulph*, or *Eadmerus*, or any other Ancient Hiſtorian of *William* the Conqueror, or his Son's Time, when they have Occaſion to ſpeak of the Great Councils of that Age, we can find none mentioned (beſides the Biſhops) except the *Principes*, *Proceres*, *Primates*, or *Optimates Regni*; or elſe in the following Age, theſe *Optimates*, or *Magnates*, (by *Matt. Paris*, and *Matt.* of *Weſtminſter*,) are often comprehended under the more particular Titles of *Comites & Barones*, or elſe by the more general ones of *Nobilitas*, *Univerſitas*, *Communitas*, or *Baronagium Regni*; that is, the whole Univerſity, *Community*, or Body of the Kingdom, repreſented in Parliament by the *Biſhops*, *Abbots*, *Earls*, and *Barons* thereof. As for moſt of theſe Words, I have given you my Senſe of them already, in the Times before the Conqueſt; and though I grant there may be other Perſons ſometimes mentioned after the *Barons*, as *Milites*, *Liberi Homines*, or *Tenentes*, yet I think Dr. *B.* very plainly proves, by thoſe Authorities he produces in his Anſwer to Mr. *P.* as alſo in his Gloſſary at the End of it, that by all the Words before-mentioned, which are uſed in our Ancient Hiſtorians, can only be underſtood either the Greater Barons, or elſe the Leſs, who were *Tenants in Capite*, and were a Part of the *Baronage* or *Nobility* of thoſe Times, and whoſe Votes did then conclude all their Subfeudatories, or *Meſne Tenants*, who held of them; and theſe together with the *Biſhops* and *Abbots*, &c. did repreſent all Degrees of Men in the Kingdom, and being often comprehended under the General Titles of *Clerus* and *Populus*, or elſe *Plebs*, or *Vulgus*; or elſe under theſe Titles, as yet more generally expreſſed by *Regnum*, and *Sacerdotium*, i. e. the *Clergy* and *Laity* of the Kingdom; the Words *Populus*, and *Plebs*, or *Vulgus*, ſignifying no more in thoſe Days, in our Hiſtorians, (when they treat of Parliamentary Affairs) than the *Lay-Earls* and *Barons*, with the other Leſs *Tenants in Capite*: So that the Vulgar, or Common People, neither by themſelves, nor their Repreſentatives had, then any Place in our Great Councils: And therefore I think I may boldly affirm with Dr. *B.*, Firſt, That the Commons repreſented by Knights, Citizens, and Burgeſſes in Parliament, were not introduced, nor were one of the Three Eſtates in Parliament, before the 49th of King *Henry* the Third.

Vid. *B. G. under theſe Titles.*

B. A. P. Introduct.

Secondly, That before that Time the Body of the Commons of *England*, or Freemen (as now underſtood, or as we now frequently call them) collectively taken, had not any Share or Votes in making of Laws for the Government of the Kingdom, nor had any Communication in Affairs of State, unleſs as they were repreſented by the *Tenants in Capite*. And theſe Two Propoſitions I think I ſhall be able to prove by undeniable Evidence, drawn from our Ancient Hiſtorians, the Laws and Charters of our Kings, as alſo from thoſe Parliament Rolls, Records, and Acts of Parliament, we have yet left us.

F. I confeſs you have made a very bold Challenge, and if you can make it out, I grant you will carry the Day, and I ſhall then willingly ſubmit to your Opinion. But ſince I find the greateſt Part of our Arguments do conſiſt in the equivocal Uſe of thoſe Words, by which I confeſs the Commons in Parliament are generally expreſſed in our Ancient Hiſtorians; I ſhall in the firſt Place ſhew you, (to avoid all unneceſſary Diſpute about Words) that by every one of theſe Expreſſions you have mentioned, the Commons might very well be comprehended, as well after the Conqueſt, as before. And therefore to take the Words in the ſame Order as you have recited them, I ſhall begin with the Word *Principes*, which I have already proved ſignified before the Conqueſt no more than Chief, or Principal Men; and that it means no more after the Conqueſt, I ſhall ſhew you by ſeveral Authorities. And though I grant that Word is moſt commonly uſed by *Eadmerus*, yet could it not be meant in the Senſe it is now underſtood, there being then never a Prince, nor ſo much as a Duke in *England*. But what was underſtood by this Expreſſion in after-times, we muſt appeal to Hiſtorians. *Mat.* of *Weſtminſter*, in his *Flores Hiſtor. Anno Dom.* 1280. (being the 7th Year of *Edward* the *Firſt*, which was but Fifteen Years

Fol. 409.

after the 49th *Henry* III.) thus reckons up the Conſtituent Parts of that Parliament, *Rex, Pontifices, & Principes Anglicani convenerunt in unum*, &c. Yet in *Rot. Clauſ.* 7. *Edward* I. it is called a Parliament; and at which the Statute of *Mortmain* was Enacted. And that the Commons were there as well as they are now, I ſhall prove when I come to thoſe Times.

In Bib. Cotton. But as for the Words *Proceres* and *Populus*, uſed as diſtinct from them, if you pleaſe to conſult the Ancient Manuſcript Chronicle of *Walter* of *Coventry*, 9° *Henry* III. *Anno Dom.* 1225, you'll find this Paſſage; *Purificatione Beatæ Mariæ convocantur apud* London, Proceres *Angliæ, ibique tractatu habito diffuſiore cum Clero, & Populo ibidem convocato Rex conceſſit Libertates tam Eccleſiæ quam Regni, quam Foreſtæ ſicut Cartæ ſuæ inde confectæ & ſingulis Comitatibus liberatæ plenius teſtantur ibidemque conceſſa Domino Regi a Comitibus, & Baronibus, &* Clero & Populo *ibidem præſentibus, Quinta decima omnium mobilium de Communi aſſenſu, præterquam de Eccleſiis.*

Fol. 223. But *Mat. Paris*, in his Hiſtory of this Tranſaction under this Year, relates it thus: *Rex* Hen. *ad natale tenuit Curiam ſuam apud* Weſtm. *Præſentibus clero &* populo, *cum* magnatibus *Regionis ſolemnitate igitur ut decebat completa, Hubertus de Burgo ex parte ejaſdem Regis propoſuit coram Archiepiſcopis, Epiſcopis, Comitibus, Baronibus, & aliis univerſis*, &c. But to give you now the reſt in *Engliſh*: The King here demanded the Fifteenth Part of all their moveable Goods; upon which the Parties above-mentioned, with one Accord anſwered, That they would willingly yield to the King's Deſire, if he would confirm the great Charters. To which the King having aſſented, and ſealed them; they granted the ſaid Supply. From which we may obſerve, that as all the inferior Clergy were comprehended under the Word *Clerus*; ſo muſt, by a like Parity of Reaſon, the Commons be under *Populus*, or elſe it would have been an idle Tautology when it is put, as it is here, diſtinct from *Magnates*.

Now ſuppoſing there be no other Perſons expreſly mentioned by theſe Two Hiſtorians to have been at this Parliament of the Laity, but the Earls and Barons, and Laity, comprehended by them under the general Names of *Proceres, Populus & Magnates*; yet do but read the Concluſion to the great Charter of the 9th of *Henry* III. and you will find, that beſides the Archbiſhops, Biſhops, Earls and Barons, there were alſo preſent, the *Knights*, *Freeholders*, and all others of the Kingdom, by their lawful Repreſentatives, as I ſhall ſhew you more at large, when I come to make Uſe of this Charter, as an Argument to prove the Commons to have appeared in Parliament before the 49th of *Henry* III. So likewiſe the Statute of Fines made 27. *Edward* I. was ordained *de Communi Concilio Regni*, and yet no Mention made either of the Aſſent of the Lords or Commons; and yet this Statute was made but Nine Years after the 18th of that King. Since which Time the *Doctor* himſelf acknowledges the Commons to have been always repreſented in Parliament, as they are at this Day; and yet *Mat. Weſtminſter*, ſpeaking of this Parliament, mentions its Orders only in general Words, thus, *Dominica ſecunda Quadrageſimæ citatis Magnatibus Regni apud* Weſtmonaſterium; and yet it is certain all the Eſtates of the Kingdom were there: So that it is not ſafe to conclude from the general and equivocal Expreſſions, either of Ancient Statutes, or Hiſtorians, That the Commons were not in Parliament, becauſe not particularly mentioned.

I could give you more Inſtances of the like Kind, but I will not tire you. But ſhall now proceed to ſhew, that notwithſtanding the Uſe you make of the Teſtimony of *Mat. Paris*, as to the Senſe of the Word *Magnates*; yet, that all thoſe Hiſtorians that writ immediately before, or after him, and continued his Hiſtory, do frequently make Uſe of the Word *Magnates & Primates*, to ſignify the Commons, as well as the Lords aſſembled in Parliament. And for the Proof of this, I ſhall give the Teſtimonies of Two approved Authors. The *Firſt* is *Thomas Walſingham*, in his Hiſtory of *England*; who in *Anno Dom.* 1313, 6. *Edward* II. hath theſe Word, *Recedens: (Rex) de Berewici partibus pervenit Eboracum, ubi magnum cum Clero tenuit Concilium, & Regni Magnatibus Univerſis.*

So likewiſe *Mat.* of *Weſtminſter*, in his *Flores Hiſtor.* in the 24th of *Edward* I. *Anno Dom.* 1296, relates a Parliament held at St. *Edmondsbury*, at which appeared *Primates, ac Magnates ſui Regni*, &c. *a quibus novum Tallagium poſtulavit*, &c. I could give you more of the ſame Kind out of this Author, but I fear, leſt I ſhould tire you, and therefore I ſhall conclude with the Teſtimony

of

of *Hen. de Knighton*, in his Hiſtory, *De Eventibus Angliæ*, where, in 9. *Henry* III. he thus ſpeaks concerning this King's granting the Great Charters, *Poſt hæc Rex Henricus conceſſit Magnatibus terræ duas chartas, unam de Foreſta, & aliam de libertatibus, ob quam cauſam* Communes *Regni conceſſerunt quintam decimam partem Mobilium, & immobilium.* From all which you may obſerve, That in the Time when this Author wrote, it was generally believed, that this Term *Magnates*, comprehended all the Eſtates of the Kingdom; and likewiſe ſuppoſed the Commons (whom he here calls *Communes*,) to have had a principal Share, not only in the paying, but granting this great Tax. And for the farther Proof of this, pray ſee what *W. Malmesbury* ſays in his Hiſtory, when reciting the Speech of the Biſhop of *Wincheſter*, then the Pope's Legate, ſpeaking of the *Londoners*, hath this remarkable Paſſage, *Londinenſes, qui præcipui habebantur in Anglia ſicut Proceres*; ſo that if the Chief Citizens of that Famous City, were reckoned *ſicut Proceres*, ſure thoſe they choſe to repreſent them in Parliament, might much better deſerve that Title. And thus likewiſe *Walſingham* in his Hiſtory, in the 17th of *Edward* II. tells us, that he ſummoned to a Parliament at *London*, *Regni Proceres, & Prælatos ad Tractandum de variis Regni negotiis*; but in the cloſe Roll of this very Year, it appears by the *Expenſis Militum*, that the Commons were there as well as the Lords. So that you ſee they were all the often comprehended by our Hiſtorians under the general Term of *Proceres Regni.*

† i.e Barons.

Claus. 17. II. *m.* 24. *dorſo.*

I come in the next Place to the Words *Nobiles & Nobilitas. Walſingham*, 5. *Edward* II. gives us this Account; *Poſt Natale Dominicum convenit univerſa multitudo Regni Nobilium ad Parliamentum* Londoniis. Now what is here meant by this *Multitudo Nobilium*, may be proved by the Parliamentary Writs of this Year, as appears by the cloſe Roll, wherein there are Writs of Summons for the Commons, directed to the Sheriffs.

Mr. *Pryn's 2d Part of the R. of Par.*

And that the Houſe of Commons were often ſtiled *Noble* in latter Times, appears by a Speech Recorded in the Rolls of Parliament, 7th of *Richard* II. to be ſpoken by Sir *Mich. de la Pool*, then Lord Chancellor, to the Lords and Commons, which begins thus, *Y diſt vous* (*i. e*, I ſay to you) *Meſſeurs Prelats, & Seigneurs Temporelx, & vous mes Compaignons les Chivalers, & autres de la* Noble Commune *de Angleterre.*

Rot. Parl. 7. *Rich.* II. *Part* 1. *n.* 1.

And to prove that this Word was then uſed in this Senſe amongſt Civilians, from whom we derive moſt of our Titles of Dignities, you may ſee in the large Work of *Barthol. Caſſaanæus*, called *Catalogus Gloriæ Mundi*, written on this Subject; where, in his Eighth *Part*, *Conſid.* 18, he hath this amongſt other Comments on the Word *Nobilitas*; *Nobilitas etiam cauſatur ex loco, quoniam civis ex urbe ſplendida oriundus, Nobilis eſt*; for which he there gives many Authorities. And this Title he looks upon as due alſo to Country Gentlemen, living upon the Huſbandry of their own Eſtates, or Annual Rents.

And that by the Word *Magnates*, are often underſtood the *Knights* of *Shires*, commonly called in old *French*, *Grantz des Countees*; I can give you ſufficient Authorities: Now this Word *Magnates* is always rendred in our old *French*, by *Grantz*: For the Proof of this, I deſire you in the firſt Place to take Notice, that *Rot. Clauſ.* 3 *E.* 2. *in* 16 *dorſo*, you will find this Title, *Inhibitio ne qui Magnates*, viz. *Comes, Baro, Miles, ſeu aliqua alia notabilis Perſona tranſeat ad Partes tranſmarinas.* Where you ſee the Word *Magnates* is applied to Knights as well as Earls and Barons. And amongſt the Common Writs of *Michaelmas* Term, *Anno* 34 *Edw.* I. in the keeping of the Remembrancer of the Treaſury of the Exchequer, the *Knights of Shires*, and *Barons of the Cinque-Ports* are called *Magnates.* So alſo in the Statute, 25 *E.* 3. *de ſervientibus*, it is there enacted, *per Aſſent de les ditz Prelatz, Countes, Barons, & autres Grandes de la dite* Communalte, *illonques Aſſemblez.* Alſo in the Statute-Book printed in *French*, in the Statute of the Staple, 27 *E.* 3. the Knights of the Shires, are expreſly called, *Grantz des Countees.* And laſtly, as for the Word *Optimates*, which is derived from the ſuperlative *Optimus*, it ſignifies no more than the beſt Sort of Men in any Commonwealth or City. And in this Senſe, *William* of *Malmsbury*, in his Hiſtory, ſpeaking of the Rich Citizens of *London*, hath this remarkable Paſſage, *Londinenſes qui pro magnitudine Civitatis* optimatis *ſunt.* And that not only Knights, but alſo ſuch Citizens as were remarkable and eminent for their Eſtates or Offices in Cities,

P. R. C. p. 94, 95.

Pag. 189.

had the Appellation of *Magnates*, appears from an ancient Manuſcript Book, kept in the *Archives* of the City of *London*; where in *Anno Dom.* 1229. being the 13*th* of *Hen.* 3. an Act of Common Council was made, *per omnes Aldermannes, & Magnates Civitatis, per aſſenſum univerſorum Civium, quod nullo tempore permitterent aliquem vicecomitem admitti in vicecomitem per duos annos continuos, ſicut prius extiterant.* So likewiſe in the ſame Book, *Anno Dom.* 1244. 29 *H.* 3. mention is there made of a Diſſention that then aroſe about the Choice of a Sheriff; and the Book ſays, that *quidam de vulgo elegerunt, Nichol. Bat. per aſſenſum Majoris, & Magnates elegerunt Adam de Bently.* I could give you more of a like Nature; but I will not tire you; but no doubt the eminent Citizens of *York* and other Cities, were called *Magnates* in thoſe Times.

Liber de Antiquis Legibus, p. 64.

See y^e addition at y^e end of y^e Dialog.

From all which we may ſafely conclude, that not only Knights of Shires were called *Magnates*, but alſo the Repreſentatives for the Cities were often ſtiled *Proceres*, *Magnates*, and *Nobiles*, in our ancient Rolls, and Acts of Parliament, and other publick Writings. I beg your Pardon for being thus long; but I could not make an End ſooner, and prove the true Senſe of theſe Words in queſtion, from ancient Hiſtorians, Acts of Parliaments, and Records; by which I hope you will be ſatisfied how unſafe it is to depend upon the general and various Expreſſions of our *Engliſh* Hiſtorians (eſpecially, as underſtood by thoſe of your Opinion); ſince if we ſhould depend upon them alone, the Commons would not oftentimes be found to have been preſent in Parliament, even when the Records themſelves expreſly prove they were there.

M. I muſt confeſs you have made me think more on this Subject, than perhaps otherwiſe I ſhould have done; yet I muſt obſerve, that moſt of the Quotations you have made uſe of, concerning the meaning of the Words *Proceres*, *Magnates*, and *Nobiles*, *&c.* are from Authors who writ after the Time that I own the Commons, as now repreſented, to have been conſtantly ſummoned to Parliament; ſo that they might very well, through Haſte or Inadvertency, confound them with the Earls and Lords, and ſo ſtile them by the ſame Titles. For I will prove to you, before the Concluſion of this Diſcourſe, by undeniable Records, that by the Words *Magnates* and *Proceres*, muſt be underſtood the Biſhops, Earls, and Barons, as diſtinguiſhed from the Commons. And I think I can ſufficiently prove from *Mat. Paris*, and the ancient Laws of our firſt *Norman* Kings, as alſo from the *Magna Charta* of King *John*, that by the Words *Barones* are meant the *Tenants in Capite*, who are there only mentioned to have conſtantly appeared in Parliament, till the 18th *E.* 1.; the greater and leſs *Barons*, or *Tenants in Capite*, together with thoſe of *higher Degree*, (*viz.* the Earls, Biſhops, and Abbots,) being the only Perſons who repreſented the whole Body of the Nation, in our great Councils, or Parliaments. And I take this to be ſo evident and clear, that I cannot quit this Opinion, without you can ſhew me better Reaſons to the contrary, than hitherto you have done.

F. I ſee nothing will ſatisfy thoſe who have once received a Prejudice; or otherwiſe I think it may be proved ſufficiently, from that Clauſe in *Magna Charta* I have mentioned, that other Perſons were there before the 49*th* of *Henry* III. beſides your great *Barons*, and *Tenants in Capite*. And as for the uſe of thoſe Words you mention, in our Hiſtorians after the Reign of *Hen.* III. nothing can be a plainer Proof for me: For if they did comprehend the Commons under thoſe general Words or Phraſes we have been now diſputing about, I deſire to know why they might not have been likewiſe comprehended under the ſame Terms, by *Mat. Paris*, and thoſe other Hiſtorians who writ their Hiſtories from the *Norman* Conqueſt to the End of the Reign of *Henry* the Third; and why they might not have then confounded the *Commons* with the Lords, as well as they did afterwards. But ſince I ſee you inſiſt ſo much upon your *Barons*, and *Tenants in Capite*, whom you will have alone to conſtitute the *Baronagium*, or the *Communitas*, or *Univerſitas Baronagii Angliæ*, pray give me leave to ask you a plain Queſtion, Were your leſſer *Tenants in Capite*, (or *Barones minores*) Lords or Peers of Parliament, or were they Commoners only?

M. To give you Mr. *Selden*'s Opinion, in his Titles of Honour, *cap.* 5. He ſuppoſes, that from the Time of the Conqueſt to about the middle of King *John*, every Tenant by reaſon of his Tenure or Lands he held *in capite*, was indifferently an Honorary or Parliamentary Baron; but that about the

Pag. 708.

End of King *John*'s Time, ſome only that were moſt eminent of thoſe Tenants, (ſometimes ſtiled *Barones Majores Regni*,) were ſummoned by ſeveral Writs directed to them as Lords or Peers of Parliament; and that the reſt, being the leſſer or lower *Tenants in Capite*, (ſometimes ſtiled *Barones minores*,) were for ſome Time before this ſummoned by general Writs, directed to the Sheriffs or Bayliffs, as appears by King *John*'s *Magna Charta*. Yet whether theſe Men were ever really Peers or not, I have Reaſon to doubt; ſince I do not find but it was they alone who for ſome Years after the Conqueſt, ſerved upon Juries in County Courts, and diſpatched all the Publick Buſineſs of the County; which was then (as at this Day) a Drudgery beneath the Peers to perform; and therefore I ſhall not inſiſt upon it. But thus much I think is certain, That they were a ſort of Perſons much above any other Laymen of the Kingdom; ſince they held their Eſtates immediately from the King, and were ſo conſiderable, as that by the Conſtitutions of *Clarendon*, they were not to be Excommunicated without the King's Leave; and ſo were then in ſome ſort of the ſame Order, *ratione Tenuræ*, with the Great Barons or Peers, being commonly ſtiled *Barones*, and made up but one Eſtate or Order of Laymen in Parliament. And from thence I ſuppoſe proceeds that common Error of Sir *Ed. Coke*, that the Lords and Commons did Anciently ſit together, and made but one Houſe. Now if you have any Thing to object againſt this Notion, pray let me hear it. *B. A. P.* p. 18.

F. I think you and I are come pretty near an Iſſue in this Queſtion; for you confeſs that theſe leſſer *Tenants in Capite*, and whom you compriſe under the Word *Barones*, were not truly and properly *Barons*; and ſo far you are in the Right; but yet you will have them to be ſomewhat more than meer Commoners; as if there had been ſome Degree or Order of Men in *England* in thoſe Times, who were neither Lords nor Commons, but an Amphibious Race between both. But to prove that they were indeed no more than Commoners, and not Lords nor Peers at all, nor equal with them, we need go no farther than their way of Tryal in Caſes of Treaſon or Felony, which was by meer Commoners, who were not *Tenants in Capite*, as well as thoſe that were; ſo that a Perſon who was no *Tenant in Capite*, might ſerve upon a Jury of Life and Death, with thoſe that were ſo; and as the Doctor, in his Anſwer to Mr. *P.* has aſſerted, that they only ſerved *in the Countrey upon all Juries*; and that before the Time of King *John*. So after all this Noiſe of none but Lords and Barons appearing for the whole Commons of *England*, we find by your own ſhowing, that Three Parts in Four of the Lay-members of that Council, were as meer Commoners as our Knights of Shires, and Barons of the Five Ports at this Day; nor can I ſee any Reaſon why the other *meſné*, or inferior Military *Tenants*, might not be as well comprehended under the Word *Barones*, as the former, who were meer Commoners likewiſe; if we conſider that it was neither Nobility, nor Birth, nor the King's Writs of Summons, but only the meer Tenure of their Lands that gave them a particular Right to a Place in that Aſſembly in thoſe Ages. So that the Queſtion then amounts to no more than this, Whether the Commons of *England* were then repreſented by *Tenants in Capite*, or by Knights of Shires, and others, as they are now. But ſince you will have none but *Tenants in Capite* to have had Places therein; pray tell me whether you allow that Privilege to all who held *in Capite*, or not?

M. Yes, I allow it to all who held *in Capite* by Knights Service, and who alſo enjoyed a whole Knights Fee; or ſo much as was ſufficient to render them able to ſuſtain the Dignity of that Place; not but that the King had alſo a Prerogative of ſummoning or omitting whom of them he pleaſed, to his Great Council or Parliament; till the Leſs *Tenants in Capite* thinking it a Wrong to them, it was provided by King *John*'s Charter, that all of them ſhould be ſummoned by one General Writ of Summons, directed to the Sheriff. But I exclude from this Council, all Tenants by *Petit Serjeanty*; who tho' 'tis true, they held of the King *in Capite*, yet was it not by Knights Service. So likewiſe I exclude all Cities and Towns, though the Citizens or Burgeſſes of divers of them held their Lands and Tenements by that Tenure: Since being neither Noble by Blood, nor having Eſtates ſufficient to maintain the Port of a Gentleman, or Knight, they had no Right to appear there in Perſon among the other Tenants, who were Owners of one or more Knights Fees. Yet do I not affirm, that the Commons were not after ſome Sort repreſented in Parliament by their Superior Lords, ſince the Biſhops, Abbots, and other Barons, did then make Lords, and give Taxes, not only for *B. A. P.* 117. *& deim.*

for themſelves, but their Feudatory Tenants alſo, though of never ſo great Eſtates; and *Tenure in Capite* was then looked upon as the only true Freehold of the Kingdom, and the Tenants by it as the only true Freeholders.

F. I ſhall ſhew you by and by the Falſity of this Notion; but in the mean Time pray tell me when a Great Council or Parliament was called, who repreſented thoſe Perſons, who you ſay did not appear there; and made General Laws, and granted General Taxes for themſelves, and the whole Kingdom, when there was Occaſion? For I ſee you ſhut out the greater part even of theſe your own Freeholders from this Aſſembly.

M. As for the Tenants in *Petit Serjeanty*, I at preſent conceive (though I am not ſure of it) that many of them might hold Lands, and perhaps divers Knights Fees, by Grand Serjeanty, or Knights Service alſo; ſince thoſe Eſtates which were given by the Conqueror to his Servants, to be held of him by ſuch and ſuch Petit Services, might in Proceſs of Time fall by Purchaſe, or Deſcent, into the Hands of ſuch Great *Tenants in Capite*, as had ſufficient Eſtates to maintain that Dignity; and as for the reſt, they might, for ought as I know, before the Statute *de Tallagio non concedendo*, have been taxed by the King's Writs, according to the Proportion of the Knights Fees, or Parts of Knights Fees, which they then held; and according to the Rate of the Sums impoſed in Parliament; either by way of Aids, upon every Knight's Fee; or elſe by way of Subſidy, by ſo much a Yard, or Plow-Land throughout all *England*; which has been the only way of Taxing, ever ſince that of Knights Fees hath been diſuſed.

F. Then I find after all you have ſaid, that ſcarce half your *Tenants in Capite* had any Votes in Parliament, either by themſelves, or their Repreſentatives; and ſo having Laws made for them, and being taxed at the King's Will, were as errant Slaves and Vaſſals, notwithſtanding their *Tenure in Capite*, as the meaneſt Perſon of the Kingdom, who was Taxed (as you would have it) at the Will of his Superior Lord; which whether ſo great and powerful a Body of Men would ever have ſuffered, I leave to any indifferent Perſon to judge.

M. I grant this may now appear ſomewhat hard; yet ſince it was the receiv'd Law and Cuſtom of the Kingdom, it was not then look'd upon as a Grievance; and it was then no more unjuſt than it is now, that Perſons under Forty Shillings a Year in Lands, though of never ſo good Eſtates in Money, or Stock; or that Tenants for Years, or for the Life of another, ſhould at this Day have no Votes at the Election of Knights of Shires, and conſequently be without any Repreſentatives in Parliament of their own Choice, and yet be ſubject to all Laws and Taxes (though never ſo great) when made and impoſed by the King in Parliament. And I am able to give you divers good Authorities to prove, that even *London* it ſelf, and all other Cities and Towns which held of the King *in Capite*, and were called his Demeſnes, were often taxed by the King and his Council out of Parliament, before the Statute *De Tallagio non concedendo:* And I think Dr. *B.* hath proved this beyond Exception, in his Animadverſions upon Mr. *A*'s *Jani Anglorum facies nova*; and he there gives us the Record it ſelf of 39 *Hen.* III. now in the keeping of the King's Remembrancer of the *Exchequer*: *That the King did that Year* (as he had divers times before) *Talliate, or Tax all his Demeſne Lands in* England, *and then likewiſe demanded of the City of* London, the Sum of Three Thouſand *Marks*, in the Name of the Talliage or Tax ſo laid: And the Mayor and Citizens at laſt yielded to it, after a great Conteſt. It appearing upon Search of the Rolls in the *Exchequer*, that the Citizens of *London* had been ſeveral times before ſo Taxed, in the Reigns of King *John*, and the King himſelf; and ſo they paid at leaſt the Sum which the King demanded. By which you ſee, that the greateſt and richeſt Cities and Towns in *England* were Taxed at the King's Will: nay, I think I am able to prove (were it now neceſſary) that the whole Kingdom was often Taxed by the King and his Council only, before the granting of King *John*'s *Magna Charta*; and the Statute *de Tallagio non concedendo*, abovementioned.

But to return to the Matter from which you forced me to digreſs.

I think nothing is more plain, than that our Ancient Parliaments were only the King's Court Baron for the Diſpatch of the Publick Affairs of the Kingdom; and in which, as in the Leſſer Courts Baron, or Courts of Manor, the Suitors or Tenants were, together with the Lord, or his Stewards, the ſole Judges. So that at firſt, after the Conqueſt, it belong'd to the King alone, as the Supreme Lord

of the Kingdom, to appoint or call which or what Sort of thoſe Tenants he pleaſed, to attend him with their Aid and Advice, at his Common Councils, or Parliaments. And I think nothing is more evident, (as I ſhall prove more at large from our Ancient Hiſtories, Records and Statutes) than, that before the 49th of *Henry* III. and ſome Years alſo after that Time, none but the Biſhops, Abbots, Earls, and Greater Barons, and ſome of the Leſſer *Tenants in Capite*, called in King *John*'s Charter, *Barones Minores*, then conſtituted the whole Body of the Parliament, under the Titles of *Baronagium Angliæ*, or *Communitas*, or *Univerſitas Baronagii Angliæ*. And for this I can give you ſo good Authorities, that nothing but more cogent and evident Proofs can bring me from this Opinion. And therefore I muſt tell you, I do not value thoſe looſe and inconſiderate Expreſſions of Hiſtorians, either before or after that Time.

F. I ſee the Teſtimonies of Hiſtorians are of no Credit, if they make againſt your Hypotheſis; but I ſhall ſhow you your Miſtakes about the King's Taxing anon; but the main Force of your Argument lies in the Signification of thoſe *Latin* Words you have laſt mentioned; and which, I muſt needs tell you, I think you take in too ſtrict a Senſe. For Firſt, as to the Word *Baro*, I grant it was not much in Uſe before *William* I. obtained the *Engliſh* Diadem. *Baro*, ſays *Camden*, *Britanni pro ſuo non agnoſcunt, in Anglo-Saxonicis legibus nuſquam comparet, nec in Alfrici Gloſſario Saxonico inter dignitatum vocabula habetur.* For the *Engliſh Saxons* called thoſe in their own Language, *Ældermen*, which in *Latin* were named *Comites*, and by the *Danes Earls*; but it was of ſo extenſive an Import in its Signification, that we read of *Aldermani Regis*, *Aldermani Comitatus*, &c. as I have already ſhewed you. So that according to the ſtrict Senſe of this Word, we had great Number of theſe *Aldermen*; whoſe Titles ſeldom, if at all, deſcended Hereditary, till the *Confeſſor*'s Time: And after *William* I. the *Saxon* Words *Ældermen*, and *Thegnes*, began to be changed; and in the room of *Aldermanni & Thani*, we find *Comites & Barones*, as in all our Ancient Laws and Hiſtories. Nor was the Word *Barones* only taken in thoſe Days for Great *Barons*, and *Tenants in Capite*, but alſo for the Inferior Barons, or Free Tenants, which held great Eſtates of other *Meſne* Lords, as well as of the King, by certain Services, and to whom the Great Lords, or Earls (as Sir *H. Spelman* ſhews us in his Gloſſary, Title *Baro*) often directed their Charters, *Baronibus, & Fidelibus noſtris tam Francis, quam Anglis*; and we there alſo read ſome Quotations from the old Book of *Ramſey-Abby*, wherein the Barons of the Church of *Ramſey*, as alſo the *Milites*, and *Liberi homines* thereof, are particularly mentioned under the Title of *Barons*; all which, (as this Learned Author tells us) *non de Magnatibus ſunt intelligenda, ſed de Vaſſallis feodalibus, note ſcil. melioris.*

P. R. C. Page 108. Page 121. Spel. *Gloſſ. Tit.* Alderman. Page 70.

And the ſame Author ſays a little lower, that Barons are often taken *pro libere Tenentibus in genere, hoc eſt tam in Soccagio per ſervitium Militare.*

M. What then? Do you ſuppoſe that all the Freeholders in *England*, by whatſoever Tenure they held, were *Barons*, and appeared in Perſon in Parliament, before the Time Sir *H. Spelman* in his Gloſſary, and Dr. *B.* aſſign for the ſummoning of the Commons to Parliament? At this Rate every Yeoman, or Petty Freeholder, was a Baron: So that this Aſſembly might then conſiſt of above Fifty or Sixty Thouſand Perſons. Since *Spot* in his Chronicle tells us, that *William* the Conqueror reſerved to himſelf the Service of about Sixty Thouſand Knights Fees, which by the Time, I ſuppoſe, might have been divided into many more leſſer ones, by Co-heirſhip, or by Sale; and otherwiſe Parcelled out by the King's Licenſe into Half Knights Fees, Third Part of Fees, Fourth Part of Fees, Eight Parts, Sixteen, Twenty, Thirty and Forty Parts of Fees; and ſo have been increaſed into as many more. And theſe, beſides the Tenants in Soccage, muſt needs have been ſo numerous, that what Room, nay, what Field or Place, was able to contain ſo great a Multitude? Or how could any Buſineſs have been tranſacted therein, without the greateſt Confuſion imaginable?

Vid. *Gloſſar. Tit.* *B. A. P.* Page 19.

F. So then you your ſelf muſt alſo grant, that when all your Greater and Leſs Barons, or *Tenants in Capite*, appeared in Perſon, Parliaments were much more numerous than they are now; ſince according to the Doctor's Catalogue, out of *Doomſday-Book*, (in his *Appendix* to his Introduction to the *Engliſh* Hiſtory,) all the *Tenants in Capite*, or *Serjeanty*, that held the Lands in every County of King *William*, did (beſides the Biſhops, Abbots, Earls, and Barons) altogether amount but to about Seven Hundred; and theſe in the 49th of *Henry* III. by Forfeiture,

and new Conveyances from the Crown, or by thoſe other ways you have now mentioned, might be multiplied into twice as many more; and thoſe alſo of ſufficient Eſtates to maintain the Port of a Member of Parliament, or Knight. Since Fifteen Pounds a Year was in the Reign of King *John*, and beginning of King *Henry* III. reckoned as a Knights Fee; and he that had it was liable to be Knighted. And if ſo, I pray, according to your own Hypotheſis, how could ſo great an Aſſembly be managed, as of about Three Thouſand, or Four Thouſand Perſons, without ſtrange Confuſion and Diſorder? But upon our Principles there will follow no more Abſurdities or Inconveniencies than in yours; for either theſe Barons of Counties, Burgeſſes, and Inhabitants of Towns and Cities, were always repreſented by Knights and Citizens, as they are now; or elſe theſe Barons of Counties appearing for themſelves, were Lords of Manors, or Freeholders of good Eſtates, who were not ſo numerous or inconſiderable as you imagine; the Freehold Lands in *England*, being in thoſe Days but in a few Hands, in Compariſon to what they are now. And for this Opinion I have Sir *H. Spelman* of my Side; who in the Place already quoted, under the Title of *Barones Comitatus*, expreſly tells us, *Hoc nomine contineri videtur antiquis paginis, omnis Baronum Feodalium ſpecies, in uno quovis Comitatu degentium: Proceres nempè, & Maneriorum Domini, nec non libere quique Tenentes, hoc eſt fundorum proprietarij, Anglicè* Freeholders *ut ſuperiùs dictum eſt. Notandum autem eſt hoc liberè Tenentes, nec tam exiles olim fuiſſe, nèc tam Vulgares ut hodiè deprehenduntur; nam villas, & Dominia, in minutas Hereditates non dum diſtrahebant Nobiles; ſed (ut vidimus in Hibernia) penes ſe retinentes, agros, per precarios excolebant, & adſcriptitios.*

So that you ſee Sir *H. Spelman* then believed, that the Manors, and Great Freeholds in *England*, were not then Parcell'd out into ſo many ſmall Shares as you imagine. And that ſuch Inferior Barons, whether they held *in Capite*, or not, were alſo called *Proceres*, ſee the Laws of *Henry* I. *Chap.* 25. The Title whereof is, *de Privilegiis* Procerum *Angliæ*. The Law runs thus, *Si exurgat placitum inter homines alicujus Baronum ſocnam habentium, tractetur placitum in Curia Domini ſui.* Now that this *Socna* was no more than *Soc.* in old *Saxon*, ſee *Spel. Gloſſ. Tit Soc.* i. e. *ſecta de hominibus in curia Domini ſecundum conſuetudinem*; ſo likewiſe *in Titulo Socha, vel dicitur, Soc*; in *Saxon ſocn.* i. e. *libertas Franchefia.* From all which we may obſerve, that theſe Lords of Manors, (here called *Proceres & Barones*) had Court *Barons*, which took their Name from their Lords, though Feudatory Tenants or Vavaſours.

Lamb. Arch.

But granting that about the End of King *John*, or beginning of the Reign of *Henry* III. ſuppoſing that theſe Lords of Manors, and Great Freeholders, whether *Tenants in Capite*, or others, might amount in all to Five or Six Thouſand Perſons, I do not ſee why ſuch an Aſſembly might not be as orderly, and as well managed, as one of Three Thouſand, or Four Thouſand, (ſuppoſing your Greater *Barons*, and Leſs *Tenants in Capite*, to have then made about that Number;) eſpecially if we conſider, that moſt Buſineſs, or Acts of any Conſequence, (and for which Parliaments were called) might be prepared, and drawn up by the King and his Council before they met. So that take it which way you will, fewer Inconveniencies and Improbabilities attend my Hypotheſis, than yours.

M. That the Earls and Greater Barons, both Spiritual and Temporal, together with the *Tenants in Capite*, (although never ſo numerous, as you are pleaſed to fancy) then made the Body of the Baronage of *England*, I have very good Authority on my Side; but that any Feudatory Barons, or Tenants of a Leſſer Degree, ever had any Places or Votes in thoſe Aſſemblies, I think you can give me no ſufficient Authority for it.

'Tis true Mr. P. in his Treatiſe of the Rights of the Commons aſſerted, gives us Two modern Quotations; the one out of Mr. *Camden*'s *Britannia*, the other out of Mr. *Selden*, to prove this Aſſertion. As for the former, it is in the Introduction to the *Britannia*, firſt publiſhed in Quarto; the Words are theſe, *verum Baro ex illis nominibus videatur, quæ tempus paulatim meliora, & mollicra reddidit; nam longo poſt tempore non Milites, ſed qui liberi erant Domini, & Thani Saxonibus dicebantur, Barones vocari cæperunt, nec dum magni honoris erat, paulo autem poſteà* (meaning after the *Normans* Entrance) *eo honoris pervenit ut nomine Baronagii Angliæ omnes quodammodo Regni ordines continerentur.* But he doth not tell us that this learned Author, in his laſt Edition of this Work in *Folio*, being ſenſible of his Miſtake, hath added the Words

10.

Superiores

Superiores before *Ordines*; whereby it is plain he now reſtrains it only to the *Earls* and *Barons*, as they are now underſtood.

Mr. P's other Quotation is out of Mr. *Selden*'s Notes upon *Eadmerus*, where Commenting on the Word *Barones*, he ſaith, *Vocabulum nempe alio notione uſurpari quam vulgo, neque eos duntaxat ut hodie ſignificare, quibus peculiaris ordinum Comitiis locus eſt*; but then conceals this that follows, which makes directly againſt him; *Sed univerſos, qui Regiæ munificentiæ, ad formulam Juris noſtri Clientelaris quod nullius Villæ Regiæ glebam, ſed ipſum tantum modo Regem ſpectat, Tenure en Chief (Phraſi forenſi dicimus) ſive Tenura in Capite lati fundia poſſidebant*; whereby you may ſee that he expreſly reſtrains this Word *Barones* to *Tenants in Capite* only; though your Author takes no Notice of it. Nor indeed in his Titles of Honour, doth Mr. *Selden* give us any other Deſcription of a Baron, (I mean ſuch who had a Vote in Parliament) but ſuch in the Senſe that is taken in *Henry* I. his Charter, as it is recited in *Matt. Paris*, *Siquis Baronum meorum, Comitum vel* Aliorum *qui de me tenent mortuus fuerit.* i. e. One who was either one of the Earls, or Greater Barons; or otherwiſe held *in Capite*. *Fol.* 168. *Chap.* 5.

F. Mr. P. is not at all to be blamed (as you make him) in theſe Two Quotations; in that out of *Camden*, you cannot deny, but he hath truly cited that Author, as it was in his Firſt Edition; and if he afterwards altered it, it may very well be queſtioned, whether he did not add the Word *Superiores*, rather out of fear of diſpleaſing the *Engliſh* Nobility, (whom that Quotation had before ſhock'd) than out of any Senſe of his being in the wrong; as it appears by the Words immediately following, when he tells us out of a Nameleſs Manuſcript Author, whoſe Name I wiſh he had told us; *That* Henry III. *out of ſo great a Multitude of Barons, which was ſeditious and turbulent, called the beſt and chiefeſt of them only by Writ to Parliament.* By which it plainly appears, that he ſuppoſed all thoſe Leſs *Barons*, or *Tenants in Capite*, though no Lords, as now underſtood, who were thus excluded, to have been only Nominal, and not Real *Barons*; and if ſo, meer *Commoners*; or elſe he muſt extend the Peerage of *England* to at leaſt Three or Four Thouſand Perſons; for ſo many *Tenants in Capite*, might very well be at that Time.

The ſame I may likewiſe ſay as to the Quotation out of Mr. *Selden*; for by the Words, *quibus peculiaris in ordinum Comitiis locus eſt*; 'tis plain he ſuppoſed that all the reſt of thoſe *Tenants in Capite* were but Commoners; yet he no where affirms, that none but theſe appeared in Parliament for all the Commons of *England*; for he very well knew the Unreaſonableneſs of that Suppoſition. Since beſides theſe *Barons*, or *Tenants in Capite*, *Bracton*, in his Firſt Book, tells us of divers other Orders of Men, of Great Dignity and Power in this Kingdom, about the Time when you ſuppoſe this marvellous Alteration to have happened. His Words are theſe, *Et ſub iis (viz. Regibus) ſunt Duces, Comites, Barones, Magnates, ſive* Vavaſſores, *& Milites, & etiam Liberi, & Villani, & diverſæ Poteſtates ſub Rege conſtitutæ*; and a little farther, *ſunt & alii Potentes ſub Rege qui dicuntur Barones, hoc eſt Robur belli*; *ſunt & alij qui dicuntur Vavaſſores viri magnæ Dignitatis.* From which Words I deſire you to obſerve, that he here makes the *Magnates*, and the *Vavaſſores*, or Feudatory Tenants, to be all one, and alſo ranks them before the *Milites*. Now whether theſe *Vavaſſores* and *Milites*, who did not all hold of the King *in Capite*, were Men of ſo great Dignity and Power as theſe whom he here reckons immediately after the Earls and Great Barons, ſhould have no Votes in Parliament, neither by themſelves, nor their Repreſentatives, is altogether improbable. *Chap.* 8.

And agreeable to this of *Bracton*, *Du Freſne*, in his *Lexicon Tit. Vavaſſor*, tells us, that *Vavaſſorum duo erant ordines, ſub majorum appellatione complectuntur, qui Barones appellantur, ſub minorum vero, quos vulgò* Vavaſſores *dicunt*; *& lege Henrici* I. *Reg. Thaines minores, reſpectu Thainorum majorum qui Baronibus æquiparantur.* But that theſe Leſſer *Thanes* or *Vavaſſors*, were alſo ſtiled *Barones*, Sir *H. Spelman* tells us expreſly in his Gloſſary, *Tit. Baro*; *Etiam Barones Comitum, Procerumque, hoc eſt Barones ſubalterni, & Baronum Barones ſæpiſſime leguntur*; and of this he gives us many Examples; and particularly of the Chief Tenants of the Abbey of *Ramſey*, above-mentioned. So likewiſe the ſame Author, a Leaf or Two farther, ſpeaking of the *Barones* of *London*, mentioned in the Charter of King *Henry* I. underſtands them, *pro civibus præſtantioribus qui ſocnas ſuas, & conſuetudines*, i. e. *Curias habuerunt, & Privilegia, eorum inſtar, qui in Comitatu, Barones* Pag. 1262. Pag. 70.

Comitatus dicuntur, &c. Nor did this Title of *Barones* extend to *London* alone; but he alſo immediately tells us in the ſame Place, *Sic Barones de Eboraco, de Ceſtria, de Warwico, de Soe Feverſham, & plurium Villarum Regiis Privilegiis inſignium, cum in Anglia tum in Gallia*, &c. And that Barons of Counties were no more than Lords of Manors, I have juſt now proved; for *Soena* means no more than a Court Baron, or Court of a Manor. So that here ariſes a plain Diſtinction between the *Barones Regis*, the King's Great Barons, or Tenants *in Capite*; and theſe Leſſer Barons, we now are here ſpeaking of, called *Medmeſſe Thegnes*, and *Burgh Thegnes*, by the *Saxons*, till they fix on the Word *Parliamentum*, to ſignify the Common-Council of the Kingdom; who, though no Peers, yet were *Barones Regni*, Barons or Noblemen of the Kingdom, according to the general Acceptation of the Word *Nobiles*, in that Age; and as ſuch made up the Body of the *Baronage*, called by *Matt. Paris*, and other Authors, *Baronagium*, or *Communitas Baronagii totius Angliæ*.

M. I ſee you do all you can from the equivocal Uſe of the Word *Barones*, to croud in new and unknown Men into the Great Council of the Kingdom, *viz.* your *Barons of Counties, Cities*, and *Towns*, whom (ſince you dare not affirm there were then any Knights of Shires) you ſuppoſe to have ſerved inſtead of them; and theſe you would have to be, not *Barones Regis*, but *Regni*, or *Terræ*, forſooth, *i. e.* of the *Land*, or *Kingdom*; whereas we never had any true *Barons* that held by *Meſne* Tenures here in *England*. This if you deny, you muſt deny all Hiſtory, and all our Ancient Laws, and Law-Books too; and if you grant it, you muſt confeſs, that every true *Baron* was a *Tenant in Capite*, and by your own Conceſſion, he muſt then be the King's *Baron*, or *Baro Regis*. I grant indeed, there were Nominal or Titular *Barons* (ſuch as you mention) many in thoſe Times, ſuch as were *Tenants* to Great *Lords*, *Biſhops*, or *Abbots*, of whom we find frequent Mention in our Ancient Hiſtories, Records, and Charters. But theſe are not the Men who had ever any Place in our Great Councils; and I deſire you would prove to me, that ever they appeared there before the Times I aſſign; and I would alſo have you inform your ſelf of the Gentlemen of whom you borrow this Notion, if they can prove that there were any ſuch kind of *Tenure*, as *Tenura de Terra*, or *de Regno*? Or whether there was ever any Man that held an Eſtate *de Regno*? Whether Forfeitures or Eſcheats were to the Kingdom? And whether Fealty was ſworn, or Homage done to the Kingdom? Or whether an Earl was inveſted or girt with the Sword of the County by the Kingdom? Or whether the Ancient Ceremonies uſed at the Creation of Earls and Barons, were done by the Kingdom? Thus all the Barons of *England* held of the King; and thus all theſe Things were performed and done to our Ancient Kings, and by them; which are moſt manifeſt Notes of the King's immediate Juriſdiction over the Barons; and that they were his *Tenants in Capite*, and by Conſequence his Barons only, which you cannot deny; and of which *Tenants in Capite*, the Earls and Greater Barons, always Created by Inveſtiture of Robes, or other Ceremonies, were ſummoned by particular Writs; and the other Leſs Barons, or *Tenants in Capite*, ever ſince the 17th of King *John*, were ſummoned by one Common Writ, directed to the Sheriff of the County; ſince which Time (if not ſome Time before) I grant theſe *Tenants in Capite* were not look'd upon as Barons or Peers of the Kingdom, properly ſo called. Yet did their Votes in Parliament ſtill conclude, and charge their Tenants in the making and impoſing of Taxes or Laws, which they alone, together with the Biſhops and greater Barons, ſtill performed, until the Times I aſſign.

B. A. P. Pag. 161.

F. I ſee you are in a Wood, and do not know well under what Claſs to rank your *Tenants in Capite*; for if they were at firſt all Lords or Peers, how could they ſerve upon Juries in Hundred or County Courts? If they were meer Commoners, then there were Commons in Parliament, before the 49th of *Henry* III. and why might not others as conſiderable Commoners, have Places in the Great Council as well as they, whether they were the King's Barons, or *Tenants in Capite*, or not? But in Anſwer to this, you tell me, that we never had any *Barons* held by mean Tenure, here in *England*; this is plainly equivocal; for if you mean it of *Barons in Capite*, it is true; if of other *Baronies*, it is falſe by your own Confeſſion. And Sir *H. Spelman* tells us, in the Title laſt quoted, that the Baron of *Burford* pleaded to hold of the King *per Baroniam*, and yet he was never any Baron of the Kingdom. Now I deſire you to ſhew me, if he, and ſuch like Barons as himſelf, had no Place in Parliament, who it was repreſented them there. And therefore in Anſwer to your *Dilemma*, I grant that every

every Baron by Tenure, was a Tenant *in capite*; but every Tenant *in capite* was not a Baron; and this I think is ſo plain, that you your ſelf cannot deny it.

But as to your next Queſtion, I can anſwer it without asking the Gentleman, from whom you ſuppoſe I borrow the Notion, That there might be other Barons, or Lords of Mannors, who by reaſon of their Eſtates might have Places in Parliament (ſuppoſing Knights of Shires were not introduced till after King *John*'s Time, when ſuch Freeholders became too numerous all to appear in Perſon) and yet theſe might not be Barons by Tenure: And therefore all your Queſtions conclude nothing; for you ſuppoſe that which is ſtill to be proved, that becauſe all the Barons of *England*, properly ſo called, held of the King *in Capite*, and were conſequently his Barons; that therefore none but Barons, and Tenants *in Capite*, had any Place in our great Councils, which is the Thing you ſuppoſe, and I as poſitively deny.

M. Well Sir, ſince you put it to that Iſſue, I hope I ſhall fully convince you, that none but the Perſons I have mentioned were the conſtituent Members of the Common Council or Parliament, before 49th *Hen.* III. or 18th *Edw.* I. and who alone gave Aſſent to all Laws that were made, and all Taxes that were to be impoſed on themſelves, and their Under-Tenants, who were then concluded by the Acts of their ſuperior Lords.

But not to wrangle with you any longer, about the Signification of the Word *Barones*, I grant there were Nominal or Titular Barons, very many, ſuch as I have mentioned; nay, that there were ſeveral other great Subjects, who had Tenants that held 5, 6, 7, 8, or 10, nay more Knights Fees under them, and who had the Name and Title of Barons. But what is this to the Purpoſe? I deſire you would prove to me, by any direct Proof, that theſe Sort of Men had any Voices, either by themſelves, or their Repreſentatives in our great Councils, till after the Time we allow them; and this (beſides the Proofs I have already brought) I think is ſufficient; ſince it is plain, that the *Barones Regni*, or *Terræ*, and the *Milites*, and *Homines ſui*, are all one and the ſame Perſons, that is, they were the King's great Barons, or *Tenants in Capite*, who alone conſtituted the Baronage, or *Univerſity* of the Baronage of *England*, or of the Kingdom, in our great Councils, or Parliaments. And for the farther Proof of this, I need go no farther than thoſe very Arguments your own Author Mr. P. hath made uſe of, in his *Right of the Commons aſſerted*; wherein he would prove from certain Letters that were ſent from the Baronage, or *Univerſity* of the Baronage of *England* to the Pope, againſt the Church of *Rome*'s Exactions here in *England*. And therefore I ſhall not bring only Fragments, Phraſes, or ſingle Words out of the Records or Hiſtories which ſeem to countenance my Opinion, contrary to the true Meaning of thoſe Records, and the Senſe of the Hiſtorians, as ſome of your Men do, but ſhall give you the Quotations out of thoſe Authors, whole and entire; and ſhall make ſuch reaſonable Deductions from them, as I think you will have no reaſon to deny to be fairly raiſed from the Words themſelves.

B. A. P. Pag. 116.

B. A. P. Pag. 111.

Thus alſo, as *Matt. Paris* relates, in the 29th *Hen.* III. the Earls, and Barons ſent Letters to the Pope, then at the Council of *Lyons*, to complain of the Pope's Exactions; which Letters are ſaid by this Author to be directed *a Magnatibus, & Univerſitate Regni Angliæ.* And it is alſo true, that in the ſame Year there were other Letters ſent thither, from the ſame Parties, to the Cardinals there aſſembled, which are recited by the old Manuſcript to have ſent Meſſengers to the Cardinals; and the old Manuſcript in the *Cottonian* Library, that they ſent to the Cardinals aſſembled at the Council of *Lyons*, Letters *à Baronibus, Militibus, & univerſis Baronagij Regni Angliæ per procuratores ſuos Rogerum Bigod Comitem Norff. Willielmum de Cantelupo, Johannem filium Galfridius Radulphum filium Nicholas, Philippum Baſſet, Barones, Procuratores Baronagii Angliæ tunc temporis. Innocentio Papa Quarto celebrante Concilium ibi generale. Anno Gratiæ* 1245. And the Letters are thus directed; *Venerabilibus in Chriſto Fratribus univerſis, & ſingulis Dei Gratia Salutem. Barones, Milites, & Univerſitas Baronagii Regni Angliæ.* And *Matt.* of *Weſtminſter* does likewiſe agree in this Relation, only ſtiles the Perſons laſt named, *Milites*, whom *Mat. Paris* called *Viri Nobiles, & diſcreti:* But this will make no Difference, as I ſhall ſhew you by and by; and to theſe *Matt.* of *Weſtminſter* adds Mr. *William Powic* Clerk, who ſeems to have been their Secretary.

Fol. 658.

B. A. P. Page 103,104.

But notwithſtanding, it will appear that all theſe Perſons ſo ſent, named *Barones & Milites, & Univerſitas Baronagij*, did not repreſent the Commons of *England* at all, but only the great Earls, Barons, and Tenants *in Capite*. For firſt it appears from Sir *W. Dugdale*'s Baronage of *England*, that every one of the Perſons here named, was either an Earl, Baron, or great Tenant *in Capite*, and not common Perſons, as your Author would have them: And tho' it is true, the *Cottonian* Manuſcript, and *Matt.* of *Weſtminſter* call ſome of them *Milites*; yet this makes nothing againſt our Opinion; for as I proved before, the great *Milites* were often ſtiled Barons, and the Barons *Milites*.

Tome 1. Fol. 706. & dein.

Nor was this Earl, and the four Barons here mentioned, choſen or ſent by the Baronage of the Kingdom aſſembled in Parliament, to repreſent them at the Council of *Lyons*, but were only pitched upon by a Body of Military Tenants, or Barons, at a Tournament intended to have been held at *Dunſtable*; which was forbidden by the King; and theſe took upon them to warn Mr. *Martin*, the Pope's Clerk, out of the Kingdom; as appears by the Account *Matt. Paris* gives us of this Buſineſs, in the Paragraph immediately following: So that the Hiſtory of the thing makes it plain, who were the *Univerſitas Regni*; to wit, the Barons, or the *Univerſitas Armatorum*, who were met to hold the Tournament, and theſe the King there called his Barons.

And after this, in the 30th of *Hen.* III. when the *Pope* did not give Satisfaction to their Grievances, the King called (as this Author tells us) *ad Parliamentum generaliſſimum, totius Regni Anglicam totalem Nobilitatem Londini* (viz.) *Prelatorum tam Abbatum, & Priorum, quam Epiſcoporum Comitum quoque & Baronum ut de Statu regni jam vacillantis efficaciter prout exegit urgens neceſſitas contrectarent.* In this very Parliament the King conferr'd with the Biſhops by themſelves, and the Earls and Barons by themſelves, about this Buſineſs of the Pope's not keeping his Promiſe: And certainly if there had been then any Commons in this Parliament, he would alſo have conferred with them about the ſame Matter.

Matt. Paris, 696.

B. A. P. Pag. 106.

The Reſult of all theſe Conferences was, that yet for the Reverence due to the Apoſtolick See, they ſhould again ſupplicate the Pope by Letters, to remove their intolerable Grievances, and inſupportable Yoke. And this they do in ſeparate Conferences. The Biſhops write by themſelves; the Abbots and Priors by themſelves; and the Earls, Barons, *&c.* by themſelves, to the Pope; and if there had been any Commons, as at this Day, they moſt certainly would likewiſe have wrote to the Pope, as well as the other conſtituent Parts of this Parliament did.

F. I hope I ſhall be able to anſwer what you have now ſaid: In the firſt Place, tho' I ſhould grant that theſe Commiſſioners ſent by the Baronage of *England*, were all of them Barons, and no Commoners among them; doth it therefore follow that the Perſons that ſent them, muſt have been all Lords too? For if thoſe Commiſſioners, were all Peers, who repreſented your *Barones minores*, or *Tenants in Capite*, (who, as you your ſelf have granted, were no Lords at all) why might not thoſe Lords as well repreſent all the Commons of *England*, as they did theſe leſſer *Tenants in Capite*? So that it ſeems plain to me, that theſe Words, *Univerſitas Baronagij Angliæ*, muſt needs then comprehend ſomewhat more than your *Barons*, and *Tenants in Capite* only; ſince the Words *Barones & Milites* alone had ſufficiently expreſſed all the conſtituent Members of your Parliament, without adding *& Univerſitas Baronagii*, which would have been a Tautology.

But that it was very uſual for the great Lords in thoſe Days, to write Letters in their own Names, as alſo for all the Commons of *England*. I ſhall ſhew you by and by, when I ſhall make uſe of two other Inſtances of a like Nature, in the Reigns of *Edw.* I. and *Edw.* III. And therefore it is no good Argument to prove, that the Commons had no hand in this Meſſage, or Letters, becauſe they did not write by themſelves; much leſs is it ſo, becauſe it is not expreſly mentioned by *Matt. Paris*, that the King conſulted the Commons as well as the Biſhops, Earls, and Barons, that therefore they were not there: Since this Author writing very conciſely, comprehends all the Lay Eſtates, under the Words *Comites & Barones*, or elſe *Magnates* alone. So likewiſe *Matt.* of *Weſtminſter*, when he mentions divers Parliaments in the Reign of *Edw.* I. and *Edw.* II. expreſſes them under the ſame Title. And

tho' this Author often mentions the Earls and Barons to have done this, or that; yet it is no Argument to conclude, that the Commons were not then there. And for this, pray take these Examples out of *Matt. Westminster*; when *Anno Dom.* 1300. the 28th of *Edward* I. he tells us, the King held his Parliament at *Lincoln*, where the *Comites & Barones* demanded a Confirmation of the great Charters, and they further asked, that the Deforestations made by the King should be confirmed; and then he tells us, that *thereupon the Charters of Liberties and Forests, were again renewed; and being past under the Great Seal, were proclaimed before all the People, in every County*; where you see that the Complaints were made by the Earls and Barons; yet it is certain, that the Confirmation of these Charters, must have proceeded from all the Estates; tho' the Bishops, and Abbots, and Priors, who were then constituent Members of this Parliament, are not at all mentioned. Yet that they, as also the Commons were at this Parliament, will easily appear, if you please to consult the Clause-Roll, where the Summons are entred. So also *Henry de Knighton, Anno Dom.* 1301. the 29th *Edw.* I. tells us of a Parliament this King held at *Stamford*, where met the Earls and Barons, *and with great Courage persisted until they had got the Charter of Forests fully granted and confirmed to them.* Where note, that tho' by way of Excellency, the Earls and Barons (who then bore the greatest Sway, are here only mentioned) yet it is certain, that the Commons were also summoned to this Parliament. Now if these latter Historians pass by the Commons, tho' then constituent Members of Parliament, without any one express Mention, why might not *Matt. Paris* do so too? *Clans. 28. E.*

But that he did so, appears very plainly from the Letters of the Parliament held in 30th *Hen.* III. to the *Pope* and Cardinals, being still at the Council of *Lyons*, to remove the intolerable Grievances above mentioned. That to the *Pope* is recited at large by *Mat. Paris*, tho' that to the Cardinals is omitted by him; but in an Ancient Manuscript of the Time extant in Sir *John Cotton*'s Library, both Letters are said to have been sent to the Cardinals at *Lyons*, *à Baronibus, Militibus, & Universitatibus Baronagii Angliæ.* Now who these were, the subsequent Letter to the *Pope* in *Mat. Paris* will inform us, which begins thus; *Sanctissimo*, &c. *Devoti filii sui Richardus Comes Cornubiæ*, &c. together with divers other Earls there named; but the Commons are not particularly recited, yet are comprehended under these general Words, *Barones, Proceres, & Magnates, ac Nobiles Portuum maris habitaturos, nec non & Clerus & Populus universus Salutem*; and pray note, that *Matt. Paris* had before called this a Parliament, *Convenientibus igitur ad Parliamentum totius Regni Magnatibus*; which Words take in the Knights of Shires; as the *Nobiles, Portuum maris habitaturos*, do the Barons of the Cinque Ports; (which by the way are here called Noble, tho' mere Commoners.) And to obviate your Objection, that the Word *Clerus* after *Barones*, may refer to the Bishops, Abbots, and Priors, that could not be; for they at the same time had already writ Letters apart to the *Pope*, concerning this Matter; as you may see in the same Author immediately before. And therefore nothing seems plainer to me, than that by these Words, *Clerus & Populus Universus*, must be meant the inferior Clergy, and Commons, appearing by their Representatives in this Parliament, and that so became *generalissimum Parliamentum*, as this Historian calls it. *Bib. Cott. Sub Effigie Cleopatr.* *Mat. Paris*, 696, 700. *Pag.* 697.

M. Pray give me leave now to reply.

In the first Place I must tell you, that the Instances you have brought out of *Matt. Westm.* to prove that under the Words *Comites* and *Barones, & Baronagium Angliæ*, were comprehended the Commons of *England*, and that after the Time I allow them to have been there, will not do your Business.

As to the Instance about the Pope's Nuncio, it seems to have been an Order of the Lords only; the Words being in *Latin, de Assensu Comitum & Baronum.*

As to the Third Instance out of *Knighton*, he said indeed, that the *Comites & Barones* met at the Parliament at *Stamford*; and that might very well be, since they alone then insisted upon the Confirmation of the Charter of Forests.

But as for the Argument you draw from the Direction of this Letter to the Pope: The learned Dr. in his Treatise against Mr. P. hath given us a very good Answer to it, to this Effect; that tho' it is true, that after the *Barones & Proceres*, there are divers other Parties mentioned, yet was this Troop of Words put together in this Letter to no other purpose, than to make an Impression upon *Pag.* 106.

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the Pope, and make him ſenſible what a general Diſlike the Nation had of his Exactions and Encroachments, and to induce him to a Compliance with their Deſires; the Multitude or Commons not being any-ways Parties, or privy to the writing of the Letters. For the Clamour of the People was a great Argument uſed in all theſe Letters, to affect the *Pope*, how ungrateful his Impoſitions were to the Nation. But in this of the Temporal Barons more eſpecially, who addreſs themſelves to the *Pope* by Petition, enforcing it by the Clamour of the People, againſt thoſe Injuries and Oppreſſions upon the whole Kingdom, it is to no purpoſe to repeat all that follows; only obſerve this Clauſe, *Alioquin neceſſe eſt ut veniant Scandala Clamore Populi, tam Dominum Regem, quam nos intolerabiliter impellente.* And the King likewiſe in his Letter to the Pope and Cardinals aggravates the Matter, by the like Arguments; as appears by this Clauſe, in his Letter to them; *verum Clamorem incomparabilem Magnatum Angliæ tam Cleri quam Populi non poſſumus obaudire.* From this general Clamour of the People, and not from their being Parties, it was, that the Beginning of the Letters from the Baronage, or the Univerſity of *England*, was ſtuffed with ſo many Words and Phraſes, to awaken his Holineſs, and invite him to redreſs their Grievances.

F. In return to what you have ſaid, I muſt tell you, that I am not convinc'd, that in the Parliament mentioned by *Matt. Weſtm.*, the Demand for the Confirmation of the Charters was made by the Lords only; ſince it is not likely that the Commons (who are there ſtiled *Divites Plebis*, and are ſaid to have been grieved by their Infringement) ſhould not have been Parties to the Complaint for their Redreſs; eſpecially ſince we find that in all ſucceeding Parliaments, the Commons are mentioned as moſt eager for the Confirmation of theſe Charters.

But as for the moſt material Part of your Anſwer to my Authority from the Parliament's Letter to the *Pope*, I know the Dr. endeavours all he can, to avoid the Force of this Objection, by making the Parliament top upon his Holineſs meer empty Words, inſtead of Matter; that is, according to the Dr.s' own Phraſe, *they only laid an airy Ambuſcade to intrap him.* But whether the old Gentleman was thus like to be catched, I give you leave to judge. For certainly both he and his Conſiſtory of Cardinals, knew as well as the Parliament it ſelf, what were the conſtituent Parts thereof, and they could quickly have anſwered them, that they put a meer Sham upon his Holineſs, in mentioning the Noble Inhabitants of the Sea Ports, and all the reſt of the People, both Clergy and Laity in their Letters; whereas they had nothing at all to do with the Matter, nor had ſhown any diſlike of his Holineſs's Proceedings. For if they had no Repreſentatives in Parliament, how could it be known whether they were aggrieved or not? Or is it likely the *Pope* had no Nuncio, or Friends, among the Clergy, to give him an Account of the Cheat they there put upon him? And they might as well have talked of the Clamours of the Tinners in *Cornwall*, as of thoſe of the Inhabitants of the Sea Ports, if it was only put in to augment the Clamour, or to fill up the Number of the Complainants; if the People (I mean both Nobility and Commons) had not been Parties to theſe Letters. And you your ſelf have but now recited a Clauſe in the King's Letter to the *Pope* and Cardinals, which makes it plain it was ſo; when he tells them, that he could not ſtop his Ears againſt the Clamour of the *Magnates, tam Cleri, quam Populi, i.e.* as well of the Clergy, as of the Laity, as the Dr. renders it. So that theſe Words, *Clamorem Magnatum*, muſt ſignify here the Clamour or Complaint of the whole People in Parliament; or elſe they ſignify nothing at all.

And I may as well ſay that the *Clerus* and *Populus* never appeared in Parliament at all, but that theſe were alſo meer empty Words to frighten the *Pope*. But what ſay you to the next Precedent Mr. *P.* produces to prove that the Lords and Commons together have writ Letters to the *Pope*, when he attempted to invade the Right of the Crown or Kingdom, *viz.* The Letter from the Parliament at *Lincoln* to the *Pope*, in the 29th of King *Edw.* I. wherein they aſſert the King's Superiority over the Kingdom of *Scotland*, and deſire that his Holineſs would deſiſt from meddling farther with it. Which Letter, tho' ſubſcribed by above a Hundred Earls and Barons, as it was the Cuſtom of that Age, yet it is ſaid expreſly in the Concluſion, *In cujus rei Teſtimonium Sigillatam pro nobis, quam pro tota* Communitate *prædicti Regni Angliæ preſentibus ſunt appenſa.*

P. R. C. Page 115.

Mat. Weſtm. Anno Dom. 1301.

M. Tho'

M. Though this Authority is after the Time we acknowledge the Commons to have been ſummoned to Parliament, and therefore I need not ſpeak particularly to it; yet I grant your Argument hath ſome Weight in it, ſince it here ſeems, that the Lords did Sign this Letter, for the Commons, as well as themſelves: I ſhall therefore endeavour to Anſwer it. I confeſs it appears very ſpecious at firſt ſight; but what if I ſhew you, that this Letter was written by the Lords only from *Lincoln*, after the Commons had been diſmiſſed from thence by Prorogation or Adjournment? For though it is commonly ſtory'd, (but erroneouſly) that this whole Parliament, or at leaſt the Temporal Lords, and the Commons, wrote to the *Pope* concerning the Juriſdiction and Superiority of the Kings of *England* over the Kingdom of *Scotland*: Yet it cannot be ſo; for this Parliament met on the *Octaves* of *Hillary*, or the 20th of *January*, and ſate but Eight Days; the Writs for the Commons Expences bear Date *January* the 30th of the ſame Year; and the Letter to the *Pope*, ſigned by the Temporal Lords for themſelves, and the whole Community of the Kingdom of *England*, is Dated *February* the 12th next following at *Lincoln*, after the Commons had been diſcharged Fourteen Days. So that you ſee the Barons ſtill continued to ſtile themſelves the Community of *England*; and both Spiritual and Temporal Barons, and others of the King's Council, did ſtay and diſpatch much Buſineſs, after all others were diſmiſſed, according to the Tenor of the there recited Proclamation, and may be fully proved from the Proceedings of that Parliament, as they are to be found in *Ryley*'s *Placita Parliamentaria*. So that nothing ſeems plainer to me, than that the whole *Community* of *England*, for whom the Barons there named ſet their Seals to that Letter you mentioned, were the *Community* of the Barons only.

B. A. P. *Page* 153.

Vid. *Pryn*'s *4th Part of the Regiſt. of Parliament Writs.*

Fol. 241, *&c.*

F. I confeſs Mr. *Pryn*, in his Animadverſions upon my Lord *Coke*'s Fourth Inſtitute, was the firſt who ſtarted this Objection, That the Commons could not be preſent as Parties to this Letter. Yet he ſtill ſuppoſes that the Lords who ſtaid behind, and made a kind of a Great Council at *Lincoln*, Signed it not only for themſelves, but for the Commons alſo, though not actually there; and is not ſo extravagant as your Doctor, to ſuppoſe, that by the Words in this Letter, *Tam pro Nobis, quam pro tota Communitate*, &c. are to be underſtood the Community of Barons only; for that would have been a Tautology indeed: For ſo the laſt Words, *Communitas Regni*, &c. would have ſignified no more than that they ſubſcribed for themſelves, and themſelves; and that the Word *Communitas Regni*, (which I can prove to you by many Examples, did then comprehend the Commons of *England*) muſt here mean more than your Community of the Earls and Barons. For pray take Notice, that the *Tenants in Capite*, had now by your own Conceſſion, left off to appear in Parliament in a Body, as being now repreſented by the Knights of Shires, *&c.* So that Sir *Edward Coke* very well obſerves in his Fourth Inſtitute, that this Letter was Sealed by above One Hundred and Four Earls and Barons, yet it was by the Aſſent of the whole Commonalty in Parliament; and Mr. *Pryn* is ſo far convinced of this in his exact Hiſtory of Papal Uſurpations, that he ſtiles this Letter, *The Memorable Epiſtle of the Earls, Barons, Great Men, and Commons of* England, *&c.*

Page 9.

Page 893.

But to ſhew you farther that there was no Change, neither of the conſtituent Parts of our Ancient Parliaments, nor of the Terms by which they are expreſſed in our Ancient Records, appears by a Plea among Mr. *Ryley*'s Printed Pleas of Parliament, in the 35th of *Edward* I. where it is recited, that in the Parliament at *Carliſle*, *Will de Teſta*, the Pope's Clerk, was Impeach'd *per Comites, Barones, & alios Magnates*, & Communitatem *totius Regni*, concerning divers new and intolerable Grievances laid upon them by the Pope: Where you ſee there is no Change of this Word *Communitas*, after the Commons were (as you ſuppoſe) certainly preſent in this Parliament; and why the ſame Word ſhould not ſignify the ſame Thing in the beginning of this King's Reign, as well as now, you had need give me very good Authority to prove the contrary againſt ſuch clear Evidence as this. But this Record goes on, and farther recites, that theſe Letters were ſent to the Pope, *Ex parte Communitatis prædictæ*; and in which, *Clerus & Populus dicti Regni*, ſet forth the ſaid Grievances to the full. Now, as the Word *Clerus* here expreſſes all ſorts of Degrees of Clergy, as well Superior as Inferior, repreſented in *Parliament* and *Convocation*, ſo muſt *Populus* here ſignify the Laity of both Orders, as well the Commons as Lords, ſince the Commons were certainly preſent at this Parliament; and why the Word *Populus* ſhould not

Fol. 376.

ſignify the ſame Thing long before, I can ſee no Reaſon for it, but the Doctor's bare Aſſertion.

And as for what you ſay, that the Commons could be no Parties to this Letter, becauſe it appears by the Writs of Expences, that they were diſcharged before this Letter was written; admitting it were ſo, it makes nothing againſt my Aſſertion. For why could not the Commons agree upon the Subſtance of the Letter, and leave the Lords to draw it up, and ſubſcribe it for them, after they were gone Home? And that it was ſo, appears by the Letter it ſelf, which recites, *That the King had cauſed the Pope's Letter, In medio*, or *pleno Parliamento exhiberi, ac ſerioſe nobis fecit exponi unde habito tractatu, & deliberatione Diligenti ſuper contentis in literis veſtris memoratis*, communis *concors, &* unanimus omnium, *& ſingulorum conſenſus fuit*, &c. Now every one knows, that underſtands any thing of Parliamentary Affairs, that when any Thing is ſaid in an Act of Parliament, or other Record, to have been agreed upon in full Parliament, that is always underſtood to have been done, all the Eſtates being there preſent. Nor can I ſee any Reaſon why this Letter ſhould not be called the Letter of the Commons, as well as of the Lords, ſince the very Statutes of that Age were often ſaid to have been aſſented to by the Commons, though it is clear they were not drawn up into Form till after the Parliament was diſmiſſed.

But that the Commons were certainly Parties to this Letter, appears by a Record of the beginning of *Edward* the IIId's Time, Printed by Mr. *Pryn*, then Keeper of the Records of the *Tower*, (and which he tells us he found among the Rolls in the *White-Tower*) which Record contains the Heads of a Defence compiled by the King's Council, in order to a ſtronger Plea againſt the *Pope*'s taking Cognizance in the Court of *Rome*, concerning the King of *England*'s Superiority over *Scotland*; in the Concluſion of the Second of which Records, there is a remarkable Article relating to this very Letter now before us, in theſe Words, *Item ad finem quod Nobiles Regni Angliæ & Procuratores Communitatis ſubditorum Regni prædicti, admittantur per ipſum Dominum Regem ad hujuſmodi defenſiones propenend. prout eorum Anteceſſores ab Avo dicti Domini Regis noſtri erant admiſſi.* Now to what Tranſaction of this kind, in the Reign of *Edward* I. this King's Grandfather, can this Paſſage refer, but to this very Letter, which was aſſented, as well *per procuratores Communitatis Regni*, as by the Barons, here called *Nobiles Regni*? And this Application thereof is given by Mr. *Pryn* himſelf, when he makes Uſe of theſe Records.

Pryn's Exact Hiſtory, Page 895.

P. R. C. Page 119.

But to let you ſee farther, that the Lords and Commons, for all this Author's Opinion to the contrary, might join in a Letter to the *Pope*, I ſhall ſhew you by that which was writ in the Name of the whole Parliament to the *Pope*, in the 17th of *Edward* III. about the Proviſions of Benefices, which then grew ſo exorbitant, that *Walſingham* tells us in his Hiſtory, *Quod Rex & tota Nobilitas Regni pati noluit*, &c. which Phraſe the Letter it ſelf will beſt explain. The Beginning and Concluſion of which I ſhall give you in *Engliſh*, as you may find it in Mr. *Fox*'s Book of Martyrs.

Vita Edw. III. fol. 161.

Vol. I. Page 501.

To the Moſt Holy Father in God, Lord Clement, *by the Grace of God, of the Holy Church of* Rome, *and of the Univerſal Church, Chief and High Biſhop, his Humble and devout Children, the* Princes, Dukes, Earls, Barons, Knights, Citizens *and* Burgeſſes, *and all the* Commonalty *of the Realm of* Ehgland, *aſſembled at a Parliament holden at* Weſtminſter, *the* 15th *of* May *laſt paſt*, &c. *In Witneſs whereof we have hereunto ſet our Seals.* Given in the full Parliament at *Weſtminſter*, on the 18th Day of *May*, *Anno Dom.* 1343.

And it ſtill appears by the Parliament Roll of this Year, *viz.* 17th *Edward* III. n. 59. that the Commons Petitioned the King, that the Lords might ſtay at the Parliament till they had perfected and Seal'd this Letter.

Tit. Rot. Roman. 17. Edw. III m. 3.

And that there was ſuch a Letter then written by the Parliament, appears by the King's Letter to the *Pope* about the ſame Matter, ſtill among the *Tower* Records; (in which he imitated his Grandfather, *Edward* I. and Great Grandfather *Henry* III. who alſo ſent Letters to the *Pope* on ſuch like Occaſions); but in thoſe to excuſe the Archbiſhop of *Canterbury* from being the Author of thoſe Complaints, he had this Paſſage, that ſince it was the Judgment, *tam Procerum & Nobilium, quam Communitatis Regni in ultimo Parliamento contra Proviſorum Exercitum.*

To

To conclude; I think nothing is plainer, than that under the *Univerſitas Regni*, in the Firſt Letter to the *Pope*, the 29th of *Henry* III. and under the *Communitas Regni*, mentioned in the Letter of the 29th of *Edward* I. were meant the ſame Eſtates or Orders of Men, as were more particularly recited in this preſent Letter, under the ſame Words; *viz.* The *Temporal Lords* and *Commons* in *Parliament* Aſſembled.

M. I muſt freely tell you, I am not yet ſatisfied with the Senſe you now put upon theſe Words, *Univerſitas*, and *Communitas Regni*, before the Commons were ſummoned to Parliament; for you your ſelf muſt grant, that as the Word *Univerſitas Regni* takes in the whole Repreſentative Body of the Kingdom, ſo likewiſe the Word *Communitas* ſignifies no more than the ſame whole Body or Community thereof. Therefore if I prove to you, that in thoſe Times this Univerſity or Community conſiſted only of the *Earls*, *Barons*, and *Tenants in Capite*, that Word *Communitas Regni*, ought never to be interpreted by the *Engliſh* Word *Commonalty* or *Commons* of *England*, till after the Time that I allow the Commons were admitted to make a conſtituent Part of the Great Council or Parliament, nor always then neither. And Mr. P. in his Book which we have ſo often cited, hath done very unfairly to make the *Univerſitas* and *Communitas Regni*, to ſignify the Commons of *England*, before they ever appeared in Parliament at all; and ſo hath he likewiſe abuſed the Word *Populus*, as I have already obſerved, to ſignify the Commons, when indeed there is nothing thereby meant, but the whole Aſſembly of the Laity, which at that Time conſiſted of no more than the *Earls*, *Barons*, or other *Tenants in Capite*. And though I grant that by *Communitas Prælatorum*, or *Baronum*, are often underſtood the Body of the Prelates or greater Barons only, called by way of Eminency, *Proceres & Magnates*; yet moſt frequently, theſe, with all the other *Tenants in Capite*, did make the whole Body of the King's immediate Tenants in Military Service, and were all together called the Baronage of *England*, or the *Community* of the Kingdom; and for this I think I ſhall give you undeniable Proofs by and by. *B. A. P. Page* 28.

F. I am very well aware that the Word *Populus* often ſignifies the whole Body of the Laity, yet not excluding the Commons, as I have already ſufficiently proved. For then the Word muſt ſignify quite contrary to its genuine Signification; inſtead of People, the Greater Nobility only; yet when that Word is put after, as diſtinct from *Magnates*, it muſt mean the Commons as now underſtood, I ſhall now ſhew you.

For that this Word *Populus* does not always ſignify the whole Body of the Nobility only, but takes in oftentimes the Commons too, pray ſee *Matt. Weſt.* who tells us, King *Edward* I. in the 34th Year of his Reign, making his Son a Knight, *Pro hac militia filii Regis conceſſus eſt Regi Trigeſimus Denarius a Populo & Clero, Mercatores vero viceſimum conceſſerunt:* Upon which your Doctor in his Gloſſary very well remarks, that it is evident upon Record, who were the *Populus* meant by the Hiſtorian, *viz.* the *Comites*, *Barones*, *& alii Magnates*, *nec non Milites Comitatuum.* So that unleſs the Knights of Shires were Lords, it is plain *Populus* takes in the Commons too. But *Univerſitas Regni*, and *Communitas Regni*, called in *French le Commune D'angleterre*, is indeed often taken for the whole Community, or Body of the whole Parliament; and this Sir *Edward Coke* owns expreſly in his Second Inſtit. upon theſe Words, *In Articulis ſuper Chartas:* Thus (ſays he) here *Le Commune* is taken for People; ſo as *tout le Commune* is here taken for all the People; and this is proved by the Senſe of the Words. For *Magna Charta* was not granted to the Commons of the Realm, but generally to all the Subjects of the Realm, *viz.* to thoſe of the Clergy, and to thoſe of the Nobility, and to the Commons alſo. *Fol.* 55. *Page* 539.

And this is a Rational as well as Grammatical Interpretation: For as the Word *Univerſitas* is derived from the Adjective *Univerſus*, which ſignifies *the Whole, or Univerſal:* So the Word *Communitas* is derived from the Adjective *Communis*, *Common* or *General.* So that theſe Two Words, when uſed ſimply in a Political or Legal Senſe, ought to take in the whole Body of the Kingdom, or all Sorts and Conditions of Freemen, appearing themſelves, or by their Lawful Proxies or Repreſentatives, in Parliament.

But I have already ſufficiently proved, that under thoſe General Words uſed in our Hiſtorians and Records, *viz. Principes*, *Proceres*, *Nobiles*, *Magnates*, *Barones*, *& alij de Regno*, were then comprehended either all the conſiderable Freeholders,

or Lords of Manors, or elſe the Knights of Shires, Citizens and Burgeſſes. So that if the Senſe of theſe Words have been ſufficiently explained, I think no reaſonable Man can have any Cauſe to doubt, whether theſe Abſtract Words, *Nobilitas*, *Univerſitas*, and *Communitas*, ſhould be taken for all Sorts and Degrees of Men, when thus repreſented in the Great Council; or whether they ſhall be confined to the Greater or Leſſer Nobility only, *viz.* the Great Lords, Biſhops, and *Tenants in Capite*, as you would make me believe, which requires ſtronger Proofs than what you have yet brought.

Beſides which Senſe of this Word *Communitas*, or *le Commune*, it is alſo more commonly uſed at this Day, and often then too, in another more reſtrained and legal Senſe; and that is, when it is uſed for the *Commonalty* or *Commons* of *England*, diſtinct from the Peers; and this may very eaſily be diſtinguiſhed, by obſerving, that when it is taken in this Senſe, it is always ſet after the particular Enumeration of the other Orders of the Lords or Peers, *viz.* the Archbiſhops, Biſhops, Abbots, Priors, Earls and Barons; or when it is put contradiſtinct to the Word *Magnates*. I ſhall give you ſome Authorities and Examples from Hiſtorians and Records of both theſe; and that in the Times preceeding thoſe that you allow the Commons to have been ſummoned in Parliament. Of this Sort is that which *Matt. Weſtminſter* mentions as a Parliament held the 37th of *Henry* III. and which is thus recited in the Patent Roll of this Year; where, after the Excommunication denounced againſt all Infringers of *Magna Charta*, there is this ſolemn Clauſe added, That if to the Writing concerning the ſaid Sentence, any other Thing, or in any otherwiſe ſhould be added thereunto, beſides the Form of the ſaid Sentence then to be denounced and approved of; that then *Dominus Rex*, *& prædicti Magnates*, *& Communitas Populi Proteſtantur publice* before all the Biſhops, that they would never conſent thereto; and conclude thus, *In cujus Rei Teſtimonium*, *& in poſterum Veritatis Teſtimonium*, the King, the Earls of *Norfolk*, *Hereford*, *Eſſex*, and *Warwick*, *Petrus* de Sabaudia, *ad Inſtantiam aliorum Magnatum & Populi Preſcripti*, *ſigilla ſua appoſuerunt*; where you may ſee, that it was uſual before the 49th of *Henry* III. for thoſe that were Peers to put their Seals for the *Communitas Populi*, or Commons.

P. R. C. Page 35.

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M. I pray give me Leave to anſwer your Authorities as you bring them, leſt I not only forget ſome of them, but alſo tire both you and my ſelf with too long a Diſcourſe. I hope I am very well able to prove, by the Learned Doctor's Aſſiſtance, that the *Communitas Populi*, here mentioned, doth ſignify not the Commonalty or Commons, but the Community of the Laity there preſent, conſiſting of the Greater Barons, or elſe of the Leſs, or *Tenants in Capite*. And for Proof of this, pray take Notice, that *Matt. Paris* called this Council *Tota Angliæ Nobilitas*. And in this Parliament the King demanded a great Sum of Money of them, after much Conteſt, and upon Promiſe to reform all Abuſes, according to the Tenure of the Great Charters; thereupon the ſame Author tells us, *The Church granted the Tenth of the Revenue for Three Years, and the Knights (or Nobility) granted for that Year Scutage*; to wit, *Three Marks of every Scutum, or Knights Fee*. And then the Archbiſhops and Biſhops in their *Pontificalibus*, with light Candles in their Hands, in the Preſence, and with the Aſſent of the King, the Earl of *Cornwal*, his Brother, and ſeveral Earls there named, *& aliorum Optimatum Regni Angliæ*, and other Chief Men of the Kingdom, Excommunicated and curſed all thoſe that from thenceforward ſhould deprive the *Church of her Right*, and all thoſe that ſhould *change*, *alter* or *diminiſh* the *Liberties* of the *Church*, and *Ancient Cuſtoms* of the *Kingdom*, eſpecially thoſe granted in the *Great Charter* of the Common Liberties of *England*, and Charter of the Foreſt granted by the King, *Archiepiſcopis*, *Epiſcopis*, *& cæteris Angliæ Prælatis*, *Comitibus*, *Baronibus*, *Militibus*, *& Liberè Tenentibus*, &c. *i. e.* To the *Archbiſhops*, *Biſhops*, and other *Prelates* of *England*; and to the *Earls*, *Barons*, *Knights* and *Free-Tenants*, or *Tenants* in *Military* or *Knights Service*: For they only were ſuch as paid Scutage, which was at this Time a kind of Compoſition with the King, for the confirming *Magna Charta*, and was never charged but upon Knights Fees; and theſe were ſuch that held perhaps one narrow or ſcanty Knights Fee only; or ſome part of a Knights Fee; as an Half, Third, Fourth, Sixth, Eighth Part, &c. who all paid a Proportionable Share of Scutage to the Great Lords, or *Tenants in Capite*, for the Land they held of them in Military Service; which was paid firſt to the Great Lords, and by them paid to the King.

B. A. P. Page 73. & dein.

Fol. 865.

And

And from thence I collect, that beſides the *Barones Majores* that came to this great Council or Parliament, there were alſo the *Tenants in Capite*, according to the Directions and Law for Summons in King *John*'s Charter, who were comprehended under the Words *tota Nobilitas*, *& Milites*; and that other Tenants that held of the *Tenants in Capite* by Knights Service, were bound by their Acts, for they all knew how many Knights-Fees they held of the King *in Capite*; and if they had given any away to others, they held of them as they did of the Crown, and anſwered a proportionable Rate towards this Tax, for the Fees, Quantities or Parts of Fees they held of them; about which there could be no Miſtake after the Scutage was aſcertain'd. So that in ſo great an Aſſembly, where all the Nobility of *England* were called together by the King's Writ, and upon ſo great an Occaſion and Solemnity, as confirming the great Charter of Liberties after ſuch an extraordinary Manner, it cannot be doubted, but beſides the Barons, all the *Tenants in Capite*, both Great and Small, which were then very numerous, were preſent, or at leaſt, moſt of them; from whence it is not difficult to tell you who the *Communitas* were; after the *Prelates*, *Barons* and *Magnates*, they were no other than the ſmall *Tenants in Capite*, who were all ſummoned by one general Writ, not choſen and ſent by the People, but ſummoned as the great Barons in general, by King *John*'s *Magna Charta*, as I ſhall ſhew you hereafter.

F. I hope I ſhall be well enough able to prove, that what you have now alledged is pure Imagination, or in the Dr.'s Phraſe, an *airy Ambuſcade*, and quite contrary to the Senſe of *Matt. Paris*, as alſo of the Lawyers and Hiſtorians of thoſe Times. For in the firſt Place, nothing is plainer, than that this Author by the Words *Communitas Populi*, muſt underſtand an Order of Men diſtinct from the *Magnates*; or elſe if the Word *Magnates* might have comprehended them all, it would have been to no Purpoſe to have mentioned any more.

But to anſwer thoſe Authorities you bring from *Mat. Paris*; as for the Word *Nobilitas*, ſince you ſtill inſiſt upon it, I have already proved that the whole Parliament, as well the Lords Spiritual and Temporal, as Commons, were both before and after this Time comprehended under theſe Words, *Nobilitas Angliæ*; and if you yet doubt of it, I can give you a plain Authority out of *Walſingham*; for it is in his Life of *Edw.* II. *Anno* 1327. where relating the Manner of that King's Depoſition, he tells us, That when the Queen and Prince came to *London*, there then met *Tota Regni Nobilitas*, to depoſe the King, and chuſe his Son in his Stead; and he preſently ſhews what this *Nobilitas* was, for then there was ſent to the King, (being Priſoner in *Kenelworth* Caſtle,) on behalf of the whole Kingdom, Two *Biſhops*, Two *Earls*, Two *Abbots*, and of every County Three *Knights*; and alſo from *London*, and other Cities and great Towns (eſpecially the Cinque Ports) a certain Number of Perſons, who informed him of the Election of his Son, and that he ſhould renounce the Crown and Royal Dignity, *&c.* This Proof is ſo plain, it needs no Comment.

As for the reſt of your Argument, the Strength of it chiefly conſiſts in this, that the Tax there mentioned is ſaid to be granted *à Militibus*, or *Tenants in Capite*, (as you would have it) of Three Marks upon every Knight's Fee. But in the firſt Place I deſire you to take notice, that this Scutage is not Scutage Service, but a general Land Tax, or Manner of taxing according to Knights Fees, and which was continued long after *Hen.* III. Reign as it appears by this Paſſage in Sir *Henry Spelman*'s Gloſſary, *Tit. Scutagium*; *Edwardus primus habuit* 40 *Solidos de quolibet Feodo Anno Regni* 13 *Dom.* 1285. *pro Expeditione contra Wallos.* And it was alſo granted by the Lords and Commons after the 18th of *Edw.* I. when you and the Dr. ſuppoſe the Commons to have then come to Parliament; and if ſo, I deſire to know why *à Militibus* here mentioned by this Author, muſt only ſignify *Tenants in Capite*, by Knights Service, and not Knights of Shires; or other inferior Tenants by Military Service; ſince it is not here ſaid *a Militibus qui de Regne tenuerunt in Capite*; and therefore it is a forced Interpretation of the Dr.'s, and without any Authority, to limit theſe Words *Militibus*, *& liberè Tenentibus*, *& omnibus de Regno noſtro* (which you omit with an *&c.*) as alſo the *omnibus Hominibus Liberis Regni noſtri*, only to the *Arch-Biſhops*, *Biſhops*, and other Prelates of *England*, and to the Earls, Barons, Knights and Free Tenants, or Tenants in Military or Knight's Service; becauſe they were only ſuch as paid Scutage; whereas you have already acknowledged that *Magna Charta* was granted to all the Peo-

ple of *England*, who had all a Benefit by it, and who paid towards the Aid there granted, as well as the *Tenants in Capite*.

But if Knights Fees alone were taxed, and that by the Tenants *in Capite* only, I desire to know by what Right all Tenants in Petit Serjeanty, and by Burgage or Soccage Tenure (who made a greater Body of Men in this Kingdom in those Times) could pay this Scutage, since they held not by Knights Service, but by certain Rents or other Services, and so not appearing in Person, could have no Representatives in this or any other Parliament of those Times. But if you will tell me they might pay according to the Value that Knights Fees were then reckoned at, *viz.* for every 20 *l.* a Years Estate; I desire to know how this could be called Scutage, or how the Tenants *in Capite*, or other Lords from whom they held those Lands, could give away their Money for them. And in the next Place I desire also to know how all the Cities and Boroughs in *England* could be charged with this Tax; a great many of them (as you your self grant) holding of the King *in Capite*, or else of Bishops, Abbots or other mesne Lords by Soccage or Burgage Tenure, so that this Tax, if granted only by the *Tenants in Capite*, by Knights Service, could reach them, and no other Persons; but if by this Word *a Militibus* may be understood Knights of Shires, then the Tax was general, as well upon Soccage Tenants, as those by Knights Service.

But for the other Words you insist upon, *viz.* the *Liberi Tenentes*, which you translate *Tenants* by *Military Service*; if that had been the Meaning of these Words, then they had been altogether in vain, since you have already told me, that the *Milites* were so called, *non a Militari Cingulo, sed a Feodo*; and if it were no Name of Dignity, then certainly the Word *Milites* would have served to comprehend all your *Liberi Tenentes*, or *Tenants in Capite*, without any other Addition. But that these Words *Liberi Tenentes*, do not here signify *Tenants* by Military Service, pray see Sir *Henry Spelman*'s Glossary, *Tit. Liber Homo, & liber Tenens*; where he there gives us a more general Signification of these Words thus, *Ad Nobiles olim spectabant isti Tituli, à majoribus ortos omnino Liberis*; and then ends thus, *vide Ingenuus, Legalis, Homo Francus, Tenens Liberè, aliàs Liber Tenens quo etiam Sensu occurit interdum Homo liber*; which upon every one of these Titles he makes to signify all one and the same Thing, *viz.* an ordinary Freeholder. And therefore it is a very forced Interpretation of yours, to limit these Words *Communitas Populi*, only to the Community or Body of the Earls, Barons, and *Tenants in Capite*.

Tho' I confess you are very kind in one main Point, in understanding the *Communitas Populi* to mean the Community of the Lesser *Tenants in Capite*, that were no Barons; and then do what you can, these Words must here signify meer Commoners, or Commons, unless you can shew us a Third Sort of Men, who, tho' neither Lords nor Commons, yet had a Place in Parliament. So that these Gentlemen, notwithstanding their Tenure, were no more Noble than their feudatory Tenants, or Vavasors themselves; nay, than the Knights of Shires are at this Day: And then granting (as I doubt not but I shall be able to prove) that the Cities and Boroughs had then also their Representatives there; I pray tell me whether or no there were not Commons in Parliament before 49 *Hen.* III. or not. Which is contrary to your Dr's Assertion in divers Places of his Answer to Mr. P.

And that the Word *Populus* must here signify the Commons, and not the whole Body of the Laity, appears plainly by this Place you have quoted; since it is restrained by your self, to mean not the whole Community of the Kingdom, but only the Community of Lesser Tenants *in Capite*, who were not Lords. But that *Matt. Paris* doth also in another Place take the Words *Populus* for the Commoners, and not for the whole Body of the Laity, pray again remember what he says under *Anno* 1225. where relating the Manner how *Magna Charta* came to be confirmed in 9th *Hen.* III. he tells us, *Rex Henricus ad Natale tenuit Curiam suam apud Westm. Præsentibus Clero, & Populo, cum Magnatibus Regionis*; which pray let us put into *English*, and see if it will not prove what I say, *viz.* The Clergy and People being present with the Great Men of the Kingdom. Now if the Word *Magnates* (as you affirm) did then comprehend all the Barons and *Tenants in Capite*, to what Purpose is the Word People put here as a distinct Member of this Parliament? But to shew you farther that this Word *Populus* is not always to be understood for the whole Body of the Laicks, but Lords and Knights of Shires, I shall shew you

out of *Walſingham*, *Anno* 1297. 24th *Edw.* I. where he mentions a Parliament held at St. *Edmundsbury*, *in quo a Civitatibus, & Burgis conceſſa eſt Regi Octava, à Populo vero reliquo duodecima pars Bonorum :* Where by *Populus* is not only meant the Peers, but Knights of Shires, or *Grands des Countees* alſo.

M. I am not prepared at preſent to anſwer all the Queries and Difficulties that you can make or raiſe againſt the Dr's Arguments; yet I think I am able to give you a very ſatisfactory Anſwer why all Tenants in Soccage ſhould be bound by the Acts of thoſe of whom they held their Eſtates. For ſince (as I have already proved) all the Lands in *England* (except what belonged to Religious Houſes) was granted out by King *William the Conqueror*, to be held *in Capite* by Knights Service, and was again granted out by theſe Head-Tenants, to their feudatory or meſne Tenants by the like Services, there were very few Lands granted in Free-Soccage at the firſt. And tho' it is true that in proceſs of Time, many of thoſe Eſtates and Lands became Free Tenements, or were holden in Soccage, that is, were Freeholds, yet the Lords ſtill retained the Homage (which in the Times we ſpeak of was no idle inſignificant Word) and by that a Dominion over the Eſtate; whereby upon Diſobedience, Treachery, or Injury done to the Lords, the Lands were forfeited to them; and tho' neither the Lands nor the Tenants to them (which were termed Freeholders) were ſubject to any baſe Services, or ſervile Works; yet the Lords had ſtill a great Power over theſe Tenants, by reaſon of their doing Homage to them; for *eo nominè*, their Lands were many ways liable to Forfeiture; and therefore it was but reaſon, that the chief Lords being Tenants *in Capite*, ſhould conclude their Tenants in Soccage alſo, and both make Laws and give Taxes for them, without their being at all privy to it. But admitting I grant, that before the 49th of *Henry* III. there were in ſome Senſe Commons in Parliament, tho' not as Knights, Citizens and Burgeſſes, choſen by the Common People as their Repreſentatives; yet will it not deſtroy mine, nor the Dr's Aſſertion; who in the Introduction before the Anſwer to Mr. *P.* only affirms, *That before the 49th aforeſaid, the Body of the Commons of* England, *or Ordinary Freemen (as now underſtood, or as we now call them) collectively taken*, &c. *had not any Share or Votes in making Laws, unleſs as they were repreſented by the* Tenants in Capite. *B. A. P.*

F. Be it ſo; but I am ſure in many Places of the Dr.'s Book, he abſolutely denies, that there were any Commons in Parliament, till the Time he aſſigns. *vid. B A. P. P.* 10, 21, 29, 30, 72, 82.

But as for what you alledge in Anſwer to my Queries, how *Tenants in Soccage* could have Laws made for them, and Taxes laid upon them by their Lords or Tenants *in Capite*? Your Anſwer is wholly grounded upon Miſtakes: For in the firſt place, King *William* did not grant all the Lands in *England* to be held of him by Knights Service; ſince (as I ſhall prove hereafter) there were many ſubordinate Tenants to Biſhops, Abbots and other Great Lords, who never forfeited their Eſtates at all, nor were diſſeized of them by your Conqueror, and who had alſo great Numbers of conſiderable Freeholders under them; as in *Kent*, the greateſt Part of the Land was *Gavelkind*, which was Soccage Tenure.

In the next Place, neither were all the Lands he beſtowed upon his Followers granted to be held by Knight's Service; ſince you your ſelf own that a great deal of Land was given by him to his Inferior Servants, to be held by Petit Serjeanty, and other Tenures; and beſides this, a great deal of other Lands was regranted by that King himſelf, to ſome of thoſe old Proprietors who had been diſpoſſeſſed, to be held in Soccage; as appears from *Fleta*, who ſpeaking of theſe Sort of Men, ſays expreſly; *In hujuſmodi maneriis [ſcilicet Regis] erant Liberi Homines*, Liberi Tenentes, *quorum quidam cum per Potentiores a Tenementis fuerant ejecti, eadem poſt modum in Villenagium tenenda reſumpſerunt; & quia hujuſmodi Tenentes cultores Regis eſſe dignoſcuntur, proviſa fuit quies, ne ſectas facerent ad Comitatum, vel Hundredum*, &c. —— *quorum Congregationem tunc Soccam appellarent, hinc eſt quod Socmanni hodie dicuntur*, &c. *Fleta*, & *Bracton*

Where you may ſee that theſe Socmen, or Soccagers were then created by a new Tenure from this King; and are alſo called *Liberi Tenentes, Freeholders*, which is contrary to your Dr.'s Notion, who would confine the Title only to his Tenants *in Capite*. Nor did all the Tenants laſt mentioned grant their Lands to others to be held by Knights Service, ſince they as well as the King did at firſt, as alſo in proceſs of Time, grant Lands to the old *Engliſh* Proprietors to be held of them in Soccage; nor was Homage the proper, or only Branch of Soccage Tenure, but

Fealty;

Fealty; (unleſs the Land had been held by Knights Service at firſt) as you may ſee in *Littleton*'s Second Book, Sect. 118. Nor did this *Soccage Tenure* give the Lord any more Right over his Tenants Eſtate, to Tax him *de alto & baſſo*, at his Will, by reaſon of the Subjection he was in to the Lord, in reſpect of Forfeiture; ſince then the King ſhould have had for the ſame Reaſon, the ſame Right over all his *Tenants in Capite*, to Tax them likewiſe at his Pleaſure. And this Right of Forfeiture in caſe of Felony, or for want of Heirs, continued to the Lords as well of *Soccage Tenants*, as others, long after the Time you aſſign for the coming of the Commons to Parliament, even to our own Times; and yet for all that, thoſe Lords could not give Taxes for ſuch *Tenants in Soccage* at their Pleaſure.

But that we may proceed, pray conſider alſo the Form of the Peace agreed upon between King *Henry* III. the Prince his Son, and the whole Body of the Kingdom, Aſſembled in Parliament, to compoſe all Differences between the King and
48*th Hen.* III. *m.* 6. *dorſo.* the Barons: The Title of which in the Record is thus; *Hæc eſt forma Pacis a Domino Rege & Domino Edwardo filio ſuo, Prælatis, & Proceribus omnibus cum Communitate totâ Regni Angliæ Communitèr & Concorditèr approbata.* Which Articles were ſigned by the Biſhop of *Lincoln*, the Biſhop of *Ely*, Earl of *Norfolk*, Earl of *Oxon*, *Humphry Bohun*, *William de Monte Caniſio*, *& Majore London*; *in Parliamento London Menſe Junii Anno Domini* 1264. *Hæc autem Ordinatio facta eſt London de Conſenſu, Voluntate, & Precepto Domini Regis, nec non Prelatorum, Baronum, ac etiam* Communitatis *tunc ibidem preſentium.*

B. A. P. *M.* I think the Doctor hath given us full Satisfaction as to this Record, in his Anſwer to Mr. P. the Subſtance of which I ſhall here give you in ſhort.

Firſt, It is certain, that at the making of this forced Peace, *Simon Mountford*, and his Faction, then held the King and Prince, as alſo *Richard* Earl of *Cornwal*, the King's Brother, as good as Priſoners, and made them do what he pleaſed; and he carried the King and Prince along with him, until he had taken in all the ſtrong Places of the Kingdom; and when he had done, then he called this Parliament, which could not be one in the Senſe it is now taken, ſince there were none there but the Earls, Barons, and Heads of the Rebels, which had the King and Prince in their Power, and (as you your ſelf ſet forth) were the ſame Perſons that Sealed it for themſelves, and the other Barons, and the whole *Community* of the Kingdom of *England*; which Community muſt be the Community of the Barons and Great Men, or *Tenants in Capite*, by Military Service, and no other; for how can the Lords and Barons ſign any Thing for the Commons, as at this Day underſtood? They did not then, nor now do repreſent them.

B. A. P. *Pag.* 81. But I ſhall give you another Authority, to make this clearer, of ſome Years before, related in *Matt. Paris*, viz. *Anno Dom.* 1258, 42d *Henry* III. where Letters are ſaid to be ſent, *a Communitate Angliæ*, to the *Pope*, concerning *Aymer de Valence*, Biſhop Elect of *Wincheſter*; the Direction is thus, *Sanctiſſimo in Chriſto Patri*, &c. *Communitas Comitum, Procerum, Magnatum, Aliorumque Regni Angliæ cum ſubjectione debita, Pedum Oſcula*, &c. And to put the Matter beyond all Doubt, it is certain that theſe Letters were ſealed by Six Earls, and Five Barons only, *vice totius Communitatis*. I need not give you their Names, ſince you may find them in the Author himſelf, as alſo cited by the Doctor. And as for *H. Bigod*, the Chief Juſtice, and the Four Perſons named after him, they are proved by Sir *William Dugdale*, in his Baronage of *England*, to have been the Greateſt Barons in the Kingdom.

Now pray let me ask you this Queſtion: Did theſe Eleven Perſons, all Great Earls and Barons, repreſent the whole *Commons*, or *Community* of *England*, as at this Day underſtood; or did they repreſent the *Community* of the *Barons* only, together with the *Alios*, the *Milites*, which held by *Military Service* of the Great *Barons*, and the Leſs *Tenants in Capite*? for the whole *Community* here intended, muſt be one of them; take which you pleaſe, you'll loſe the Cauſe. For certainly theſe Great *Earls* and *Barons* that ſealed this *Letter*, *vice totius Communitatis*, were not choſen nor ſent by the *Commons* to this *Parliament* or *Meeting*; nor were the *Commons* repreſented as at this Day by them, as you your ſelf have already granted.

F. I hope I ſhall not need to make any long Reply to this Anſwer of yours, or rather of your Doctor's, ſince it is built upon the ſame falſe Suppoſition with the other, *viz.* that the Words *Cum Communitate totâ Regni Angliæ*, muſt always mean only the *Community* of the *Tenants in Capite*; which Suppoſition, if it be falſe in your

your former Argument, is alſo as falſe in this of the *Lords* and *Commons* too; and therefore it is impertinent to repeat my Anſwer to it.

But if this were no true *Parliament*, becauſe *Simon Mountford* had then the King and Prince in his Power; this would likewiſe ſerve to Unparliament that of the 49th of this King; from whence the Gentlemen of your Opinion date the firſt coming of the *Commons* to *Parliament*; ſince the King and Prince were as much in *Simon Mountford*'s Power then, as now; and yet no Man as I know of, ever queſtioned the Validity of it; though I cannot alſo omit, that you paſs by in this *Letter*, the Words *Magnatum aliorumque Regni*; under which Words, (as I have already proved) might very well be comprehended all the Knights of Shires, as well as Citizens and Burgeſſes; unleſs the Words had run thus (as they ſhould have done to have made out your Aſſertion) *aliorumque qui de Rege Tenent in Capite.*

But to come to the main Point you inſiſt upon; which is, How theſe Great *Earls*, and *Barons*, could ſeal this Form of the Peace, and theſe *Letters* to the Pope, in the Name of all the *Commons* of *England*?

Before I anſwer to that, I pray give me Leave to ask you one Queſtion. You have already allowed that the ordinary *Tenants in Capite*, (of which that numerous Body chiefly conſiſted) though called by Courteſy *Barones Minores*, were really no *Barons*, nor Peers of the Realm; and if ſo, were but Commoners. Now pray tell me how theſe Great Earls and Barons you mentioned to have Signed this Peace, and this Letter to the Pope, could put their Seals for thoſe who were no Barons themſelves, by your own Confeſſion; and you cannot ſay they repreſented them, for they were as good *Tenants in Capite*, as the Greateſt Lords? But if you ſay they did it by their Order and Conſent, pray why might not theſe Great Lords, or Barons, as well do the like for the Knights of Shires and Burgeſſes, by their Appointment? Since I have already proved, that the Lords did act thus in the Letters which were ſent to the Pope concerning the Buſineſs of *Scotland*. And beſides, I muſt here obſerve, that the Doctor and you do not deal fairly with your Adverſaries, in citing this Authority of the *Lords* and *Barons* Signing theſe Letters to the Pope, *Vice totius Communitatis Angliæ*; ſince I acknowledge in this Place, the Word *Communitas* being put alone, doth mean no more than the Community of the whole Kingdom. But in the Authority I have quoted, it is put after the *Earls* and *Barons*, and ſo then muſt mean the whole *Commonalty* or Body of the *Commons*, in the Senſe they are now taken, and as it hath been always uſed in *French* as well as in *Latin*, when it comes after the Earls and Barons (as I have already noted.) And for this pray ſee the *Stat.* of *Weſtminſter* I. made the 3d of *Edward* I. but Eleven Years after the 49th of *Henry* III. *Per l' aſſentments des Archieveſques, Eveſques, Abbes, Priors, Counts, Barons & tout le Comminalty de la terre illonques ſummones.* Which Phraſe I can ſhew you to have continued the ſame in moſt of our *French* Statutes, during the Reign of this King, and all his Succeſſors in many Records, and Acts of Parliament, whilſt they were writ in *Latin* or *French*; which I ſhall omit reciting, becauſe I ſuppoſe you your ſelf will allow it.

I have a great deal more to ſay concerning the true Senſe of the Words *Communitas, le Commune, & le Communalty*; which becauſe it is long, and it now grows late, I ſhall defer till another Time. But I think I ſhall be able to ſhew you from undoubted Records, and Acts of Parliament, from the Reign of *Henry* III. as low as *Richard* II. that theſe Words, when uſed as I have now ſaid, after the *Earls* and *Barons*, cannot refer to them, but to another diſtinct Eſtate or Order of Men, then called *les Communer*, or *les Communes*, in *Engliſh* the Commons of the Kingdom, diſtinct from the *Biſhops* and *Lords*.

M. I ſhall not now diſpute with you concerning the Senſe you have put upon the Words you mention, but I grant they often ſignify the Commons, after the 18th of *Edward* I. in ſome Acts of *Parliament*, and *Parliamentary Records*; but I muſt beg your Pardon, if I cannot allow *Communitas* to ſignify the Commons at this Time in your Senſe; and therefore am not yet convinced that the Words *la Communalty de la terre*, mentioned in the Statute of *Weſtminſter* I. ought to be underſtood or engliſhed by the Word Commons; who, I do not ſuppoſe were then above once called to *Parliament*, till the 18th of this King.

But as for what you argue from the Knights of Shires being often called *Magnates*, and *Grantz des Countees*, I allow they are often ſo ſtiled in our Statutes *B. A. J. Page 219.*

and Rolls of *Parliament*; but if you conſider the Reaſon of it, this will do you little Service, ſince they were ſo called from their being at the beginning of their Election, choſen out of the Greateſt and moſt conſiderable *Tenants in Capite*, under the Degree of Barons in each County, and no other; who were choſen to repreſent the *Omnes alios qui de Rege Tenent in Capite*, mentioned in King *John*'s Charter; or them, and all the other *Military Tenants* by mean *Tenure*. For 'tis ſcarce to be believed, that thoſe *Tenants in Capite*, who made ſuch a Noiſe for their Liberties, would part with this main Point, of being perſonally preſent, or elſe the Body of them repreſented by ſome of their own Number in every County. And it may be upon this Account they had the Title of *Notable Knights*, &c. in the Ancient Writs of Summons, directed to the Sheriffs; though all the Tenants by Knights Service, as Suitors to the County Courts, were the Electors. And this was very likely the Reaſon of the *Statute* of the 7th of *Henry* IV. that the Election ſhould be made in the County Court by all the *Suitors*; and alſo why the *Statute* of the 18th of *Henry* VI. by which any Man that had 40 *s. per Annum* of any *Tenure*, who was before permitted to be an Elector, was altered by the 10th of *Henry* VI. and ſo explained, that none but Freeholders of 40 *s. per Annum*, ſhould afterwards be Electors, with reſpect to the leaſt Part of a Knights Fee, *viz.* 40 *s. per Annum*, which were now come into the Hands of very ordinary Men. For anciently, ſoon after, or near the Conqueſt, there were very few, or no great *Soccagers*; that is, ſuch as held great Eſtates in *Soccage*; and neither the ſmall ones, nor the *Nativi*, or Copyholders, were reputed *Liberi*, or *Legales Homines*, (as before-mentioned) or performed the Service proper to ſuch Military Tenants, or thoſe to whom they had alienated part of their Fees. But ſince I have tired you as well as my ſelf, in wrangling about the Senſe and Meaning of the Words in Diſpute between us, I ſhall for the future take a ſhorter Cut, and give you Two or Three Authorities from our Ancient Laws of *William* the Conqueror, and *Henry* II. and *Richard* I. which together with King *John*'s *Magna Charta*, will, I think, make it plain enough in Conſcience, that the Commons, as now repreſented, were not ſummoned to Parliament, during the Reign of King *John*; and whether they were ſo ſummoned before the 49th of *Henry* III. (when they were called but once, till above Twenty Years after) will be the other Part of my Task.

B. A. P. Page 19.

Cap. 15.

Chap. 2.

LL. Hen. I. Chap. 29.

F. I approve of your Method very well, and I aſſure you I love Pedantick Diſputes about the *Grammatical* Signification of Words as little as your ſelf, unleſs where it is abſolutely neceſſary; as indeed you have rendred it ſo, by raiſing the greateſt Part of your Arguments from the equivocal Uſe of thoſe general Words, whereby our Ancient Laws and Hiſtorians have ſtiled the Conſtituent Members of our Great Councils; which if they are well cleared, I think it is high Time to fall upon ſome more ſolid Arguments. But before you come to that, I cannot forbear obſerving that you your ſelf do allow, that in all Acts of *Parliament* and *Records*, after the 18th of *Edward* I. the Words *Communitas*, and *le Commune*, when put after the Earls and Barons, do ſignify the Commons in the ſame Senſe in which they are now taken; but I muſt confeſs it ſeems incredible, (nay almoſt impoſſible to me) that theſe Words ſhould ſignify the Community of the *Tenants in Capite*, in the 48th of *Henry* III. or 18th of *Edward* I. (begin where you pleaſe); and yet that the next *Parliament* after thoſe, the ſame Words ſhould be taken in quite another Senſe, for the *Knights* of *Shires*, *Citizens* and *Burgeſſes*; and that no *Statute*, *Record*, or *Hiſtorian* of that, or ſucceeding Ages, ſhould take the leaſt Notice of it.

But before I conclude this Part of the Queſtion, I cannot but rectify a great Miſtake you have fallen into, by adhering to the Doctor with too implicit a Faith. For whereas you ſuppoſe, that the Reaſon why our Knights of *Shires* were called anciently *Grantz des Countees*, was becauſe they were at firſt elected out of the *Tenants in Capite* only; and who with the other Tenants by *Military Service*, were alſo the only Electors of them at firſt, till the Statute of the 7th of *Henry* IV. *ordained the Election ſhould be made in the County Court by all the Suitors*, as if it had not been many Ages ſo before. Whereas, if you pleaſe to peruſe that Statute a little better, you will find it was not made to enlarge the Number of the Electors of Parliament Men; for long before that Time, all Sorts or Degrees of Freeholders, as well *Tenants in Capite*, as their Tenants by any kind of *Tenure*; or whether holding of ſuch *Tenants in Capite*, or elſe of others, as Abbots and Priors,

and

and other *Meſne* Tenants, did alike owe Suit and Service to the County Court, and conſequently were all alike capable of giving their Voices there, at the Election of Knights of Shires, however ſmall their Eſtates were. Nor was that Statute of *Henry* IV. now cited (which requires the Election of Knights of Shires to be made by thoſe that were ſummoned, and all other that were there preſent) made to confer any new Right upon ſuch Freeholders, but only to prevent the Abuſes of Sheriffs, who were wont before that Statute to procure Knights of Shires to be choſen clandeſtinely, without any due Summons, or Notice given to the Freeholders of the Election; much leſs doth the Statute of the 8th of *Henry* VI. confer any new Right or Privilege upon Freeholders of 40*s. per Annum*, to give their Voices at ſuch Election, (as you ſuppoſe) but only takes away the Right which the ſmaller Freeholders of under 40*s. per Annum* (whether *Tenants in Capite* or not) had before, and reſtrains it only to ſuch as *ſhall have Lands or Tenements to the Value of* 40*s. by Year above all Charges*. And it is yet a much greater Miſtake to ſuppoſe, as your Doctor doth, that this Statute of the 8th of *Henry* VI. was at all altered by that of the 16th of this King, which is no more than an Explanation of it, *viz.* that by 40*s. per Annum, was meant* 40*s. Freehold, and that of Lands lying within the County where the Election ſhould be made.* So that nothing can prove more expreſly, that all Freeholders, as well *Tenants in Capite*, as by any other *Tenure*, were all alike capable of Electing, and being Elected by the Ancient Law and Cuſtom of *England*, long before thoſe Statutes, and conſequently were all alike Freeholders in the Eye of the Law.

But if you have nothing at preſent to object againſt what I have now ſaid, pray purſue the Method you have undertaken, and let me ſee thoſe convincing Proofs you ſo much rely upon, and which you hope may alſo ſerve to convert me.

M. Before I undertake this Task, pray permit me to give you my Opinion, in anſwer to the Difficulty you have now propoſed, which I confeſs ſeems to carry ſome Weight with it; but thoſe Prejudices will ſoon vaniſh, when we conſider that the firſt Time this Alteration was practiſed, it was done in the King's Name, though by the abſolute Power of *Simon Mountfort*, in the 49th of *Henry* III. and after a Diſcontinuance of above Twenty Years was again renewed by *Edward* I. at the Deſire of the Earls and Barons, as I hope I ſhall ſhew you before we have finiſhed our Converſation. And therefore it being firſt done by the King's abſolute Power, and after with the general Conſent of the Lords, there needed no *Statute* to introduce it, any more than there was in the Reign of *William* the Conqueror, to give the Biſhops and Abbots that held by Knight's *Service*, Places in *Parliament* among the *Temporal Lords*, and to bring their Lands which were held before in *Franc Almoigne*, under the Yoke of *Military Service*.

But to proceed in the Deſign I have undertaken; it is neceſſary that I ſhew you firſt of all, who were thoſe *Freemen*, or *Freeholders*, properly ſo called, upon whom the whole Burden of the ſubordinate Government of the Kingdom chiefly relied, and who then conſtituted the Legal Univerſity or Community thereof, immediately after the *Norman* Conqueſt, and during many Kings Reigns after that Time.

I ſuppoſe you are not ignorant, that King *William* the Conqueror having outed all, or at leaſt the *Engliſh* Nobility and Gentry of their Eſtates, gave them away to his *French* and *Norman* Followers, to be held of him and his *Succeſſors in Capite*, either by Knight's *Service*, or *Petit Serjeanty*; reſerving to himſelf the Ancient *Demeſnes* of the Crown, and adding more thereunto for the Maintenance of the Royal Dignity; and for this I need refer you to no better Author than *Doomſday's* Book it ſelf. And then, after he had thus diſtributed the Lands of *England*, as aforeſaid, he compoſed a Body of Laws ſtill extant, and which are in great part Additions to the Ancient Laws of King *Edward*, and his Predeceſſors. I ſhall give you Three or Four of theſe new Laws, and then I ſhall leave you to judge, who were the true Freemen, or Freeholders of the whole Kingdom. *B. A. A. Page* 254.

The Firſt is the 52*d* Law of this King, *Tit. De Fide, & obſequio erga Regem. Statuimus etiam ut omnes Liberi Homines, fœdere & Sacramento affirmarent quod intra & extra Regnum Angliæ, (quod olim vocabatur Regnum Britanniæ) Willielmo Regi Domino ſuo Fideles eſſe volunt. Terras & Honores illius omni fidelitate ſervare cum eo, & contra inimicos & alienigenas defendere.* *Lamb. Arch. Page* 170, *& dein.*

Now whoſe theſe Freemen were, that were thus to maintain the King in his Lands and Honours, we ſhall ſee in the 55th Law following; *Tit. De Clientelari, ſeu Feudorum Jure, & Ingenuorum immunitate; Volumus etiam ac firmiter præcipimus, & concedimus ut omnes Liberi Homines totius Monarchiæ Regni noſtri prædicti habeant & teneant terras ſuas, & Poſſeſſiones ſuas, benè & in pace, libere ab omni Exactione injuſta, & ab omni Tallagio, ita quod nihil ab eis exigatur, vel capiatur, niſi ſervitium ſuum liberum, quod de jure nobis facere debent, & facere tenentur; & prout Statutum eſt eis & illis, a nobis datum & conceſſum jure Hereditario imperpetuum per* Commune Concilium *totius Regni noſtri*; whereby you may ſee, that all the Freemen here mentioned, who were to hold their Lands and Poſſeſſions in Peace, and free from all unjuſt Exaction and Taillage, were only ſuch who were to perform Free Service, (*i. e.* Knight's Service) which was before appointed and granted them in Hereditary Right by the King in the Common Council of the Kingdom.

B. A. P. Pag. 17. So that none were properly Freemen, or exempt from Tax or Talliage, but ſuch as held by Military Tenure, tho' not Knighted.

And pray alſo, by the way, take notice, that by this *Commune Conſilium Regni* you are not to underſtand a Council of *Engliſh* Men, or of *Engliſh* and *French* together, but one wholly made up of *Frenchmen* or *Normans*, who as well Biſhops and Abbots, as Temporal Earls and Barons, held almoſt all the Lands in the Kingdom by Knight's Service.

Which is alſo farther made out by the 58th Law; *Tit. de Clientum ſeu vaſſallorem præſtationibus. Statuimus etiam & firmiter præcipimus, ut omnes Comites, & Barones, & Milites, & Servientes, & Univerſi Liberi Homines totius Regni noſtri prædicti habeant & teneant ſe ſemper bene in Armis, & in Equis ut decet, & oportet & quod ſint ſemper prompti, & benè parati ad ſervitium ſuum integrum, nobis explendum & paragendum cum ſemper opus adfuerit ſecundum quod nobis debent, de Feodis & Tenementis ſuis de Jure facere; & ſicut illis ſtatuimus, per Commuue Conſilium totius Regni noſtri prædicti & illis dedimus, & conceſſimus in Feodo, Jure Hæreditario, hoc præceptum non ſit violatum ullo modo ſuper foris facturam noſtram plenam:* *Ibid.* So that here all the Freemen of his Kingdom were to perform their Military Services, with Horſe and Arms according to their Fees and Tenures. Therefore they were Tenants in Military Service only (which in thoſe Times were the only great Freemen, and that Service the only Free Service) which were meant in this Law; and how different they were from our ordinary Freeholders at this Day (for whom neither of theſe Laws were made) I dare leave it to the Judgment of every indifferent Perſon.

Theſe then were the Men, the only legal Men that named and choſe Juries, and ſerved on Juries themſelves, both in the Country and Hundred Courts, and diſpatched all Country Buſineſs under the Great Officers, as will appear by the next Law with a little Explication by what follows: *Ut Jura Regia illæſa ſervare pro viribus conentur ſubditi, Statuimus etiam & firmiter præcipimus ut omnes Liberi Homines totius Regni prædicti ſint Fratres conjurati, ad Monarchiam noſtram & ad Regnum noſtrum, pro viribus ſuis & facultatibus contra inimicos pro poſſe ſuo defendendum, & viriliter ſervandum, Pacem, & Dignitatem Coronæ noſtræ, integram obſervandam, & ad Judicium rectum, & Juſtitiam conſtanter omnibus modis pro poſſe ſuo ſine dolo, & ſine dilatione faciendum.* Now the Judgment they were to give, and the Juſtice they were to do by this Law (beſides that in their own Courts and Juriſdictions) was principally as they were Jurors or Recognitors upon Aſſize, *&c.* (tho' ſome of the greateſt of their *Milites* were often *Sheriffs*, *Hundredaries*, and other under *Judges* and Miniſterial Officers of Juſtice in their ſeveral Counties) as may be ſeen in *Glanville* every where, but eſpecially *Lib.* 2. *c.* 10, 11. *lib.* 9. *c.* 7. *c.* 17. *& lib.* 13. throughout. This of being *Suitors* to the County and Hundred Courts, *&c.* being a *Service* incident to their Tenures, and before them many Times anciently in the County and Hundred Courts, and not privately in a Chamber, were executed Deeds, Grants and Donations of Lands, contained in very ſmall Pieces of Parchment, witneſſed by *Thomas* of ſuch a Town, *John* of another, *Richard* of a third, *&c.* which were Knights, and *Liberi Tenentes* in *Military Service* in thoſe Towns of conſiderable Eſtates, and not the lower Sort of People: And this Execution of Sales and Aſſurances in open Courts, was as publick and notorious, and as ſecure, as if at that time there had been a publick Regiſter for them.

F. Before I anſwer your Concluſion from King *William*'s Laws, I muſt tell you I am not at all ſatisfied neither with the Account you give, how the Commons of *England* could come in to be a Part of the Parliament, without any Noiſe or Notice taken of it, either by our Acts of Parliament, or Hiſtorians; ſince it is not only improbable, but alſo quite contrary to Matter of Fact, and Hiſtory it ſelf; as I ſhall, I hope, make good, when we come to treat of that Subject. Nor is your Argument of any weight, ſince it doth not follow, that becauſe *William* the Conqueror ſo ſubjected the Lands of Biſhops and Abbots to Tenure by Knight's Service; that therefore this was done by his ſole Power, without any Law for it, made by the Common Council of the whole Kingdom. Since I obſerve in the firſt Law of King *William*, which you have now cited, that the very Services which (you ſay) were reſerved upon the Lands he had beſtowed, are ſaid to be ſo appointed or ſettled, by the *Common Council* of the whole Kingdom; and therefore certainly the Services of the Biſhops and Abbots muſt be ſo likewiſe; and therefore I muſt confeſs my ſelf to be of Mr. *Selden*'s Opinion in this Matter, who preſumes there was a Law for it, tho' now loſt; and cannot believe that this King (how powerful ſoever) ſhould attempt to introduce ſo great a Yoke upon all the Biſhops, and ſo many of the Abbots and Priors of *England*, without their Conſents expreſly given to a Law, and made in the Great Council concerning it, tho' that Law (as many others of this King) is not now to be found.

But to come to the main Deſign of your preſent Diſcourſe, which is to ſhew that none but Tenants by Military Service *in Capite* were in the firſt Times after the Conqueſt, properly the only true *Freemen* or *Freeholders* of the whole Kingdom. I ſhall ſhew you firſt, that the Notion is quite new, and never heard of, till the Dr. (from whom you have borrowed it) firſt broach'd it; neither Mr. *Lambard*, Mr. *Somner*, nor Sir *Henry Spelman*, nor any of our *Engliſh* Antiquaries or Lawyers ever diſcovered any ſuch Thing, before your Dr. aroſe to diſperſe theſe Clouds; every Man of the Kingdom, who was no Villain, being look'd upon as a Freeman, and every Owner of Lands of Inheritance, though of never ſo ſmall a proportion, reckoned a Freeholder, and his Eſtate called his *Franc Tenement*, or Freehold, as well in our Ancient as Modern Laws; and that Freehold was not reſtrained only to Military Service, within a Hundred Years after the Conqueſt, appears by King *John*'s *Magna Charta*; in which it is expreſly recited, that *Nullus diſtringatur ad faciendum majus ſervitium de Feodo Militis, nec de alio Libero Tenemento quam inde debetur*; and that Soccage Tenants, tho' by Villain Services, were as much Freemen as your Tenants *in Capite*, ſee *Spelman*'s Gloſſary, *Tit. Socman*, where he ſays thus; *Socmannus in natura brevium (brevi de Recto) propriè talis eſt, qui Liber eſt, & tenet de Rege, ſeu de alio Domino in antiquo dominico terras ſuas ſeu Tenementa in Villenagio. Libro Sancti Albani Tit. Houcton*, Chap. I. *Rege Angliæ manerium de Houcton tenuerunt in dominico; omnes Tenentes Liberi, ſcil. & cuſtumarii per ſokam defendebant tenementa ſua*, &c. *ex quo patet ſokmans liberos homines ſignificare.*

But ſince you ſeem to make a Diſtinction between Freemen and Freeholders, properly, or improperly ſo called; ſince King *William*'s Laws you have now cited, do not warrant any ſuch Diſtinction; I muſt beg your Excuſe, if I am not of your Opinion; for the Firſt Law you have quoted Warrants no ſuch Thing; it only ſays, *That all Freemen in general, ſhall take an Oath of Fealty to the King, to maintain him, his Lands and Honours, againſt his Enemies and Strangers.*

Now it is apparent, that this Law extended to all Freemen (who were by the ancient *Saxon* Laws recited in the Addition to the Laws of King *Edward*) to take the very ſame Oath in the *Folkmote*, as they were after your Conqueſt to do according to this Law, either in the County Courts, or Sheriffs Tourne. Nor will the next Law do the Buſineſs any more than this; for the Words are, That all *Freemen of our ſaid Kingdom may have and hold their Lands and Poſſeſſions free from all unjuſt Taillage Exactions, &c.* Which Word *Poſſeſſions* extends not only to Lands of Inheritance, (much leſs to Lands held by Knigh'ts Service) but alſo to Eſtates for Life, and all other Chattels or Poſſeſſions, as well real as perſonal: Nor doth the Words *Servitium Liberum*, extend only to thoſe Services which were reſerved upon Lands held by Knight's Service *in Capite*, but alſo to thoſe Common Services (called *Trinoda neceſſitas*) which I have formerly mentioned, *viz.* The building and repairing of Caſtles and Bridges, and Expedition againſt, Foreign Enemies, which all the Lands in *England* were liable to, as well after, as before your Conqueſt: Nor will the 58*th* Law make more for you; for tho' it

only ſays that all Earls, Barons, Knights, and their Servitors or Eſquires, and all Freemen of the Kingdom ſhall always be fitted with Horſes and Arms as they ought to be, and which they ought to do according to, and by reaſon of their Fees and Tenures. Now it is plain, that this Law cannot extend to the leſs *Tenants in Capite* only, ſince they, according to your own Senſe, are comprehended under the Word *Milites*, and their *Servientes*, which ſeems to mean their feudatory Tenants, are as much tyed by this Law to find Horſes and Arms, as the *Tenants in Capite* themſelves. So that whereas the Law ſays expreſly, *Univerſi Liberi Homines totius Regni*, it ſhould have been to make good your Senſe, *Univerſi Liberi Homines qui de Rege Tenent in Capite*; and as for the other Freemen who were of leſſer Eſtates than to find Horſes, they were to be ready with ſuch Arms as befitted their Condition, as we ſee it explained by the Aſſize of Arms of *Henry* II.; ſo that this Law of King *William* is not to be taken in the Senſe you put upon it, That all the true Freemen of the Kingdom were obliged to be ready with Horſes and Arms, as if none were Freemen that did not; but referring the Words *Horſes* and *Arms* to thoſe who are to find both; and the Word *Arms* to thoſe Freemen who were only obliged to keep Arms fit for Footmen, which Senſe the Words will very well bear, tho' expreſſed generally and conciſely according to the Mode of thoſe Times, which abhor'd more Words than needs: And if theſe Laws will not prove what you bring them for, much leſs will the laſt you have cited: For if the Word *Omnes Liberi Homines totius Monarchiæ*, in the firſt Law, who were to take an Oath of Fidelity to the King, muſt extend to all the Freemen of *England*, (as certainly it did) all Freemen being alike obliged to be ſworn in the Court Leet, and County Court; ſo muſt this too, the Title being, that *Omnes ſubditi*, all the Subjects ſhould endeavour to maintain the King's Rights with all their Power; and tho' I grant that *Subditi* here are the ſame with *Liberi Homines* in the firſt Law; yet ſince by that Law all Freemen were to take the Oaths of Fidelity to the King, theſe muſt be alſo the very ſame Freemen, who were to be ſworn Brothers to defend the Kingdom, according to their Power and Eſtates. So that all that you have ſaid to prove your Tenants by Knight's Service *in Capite*, to be the only Freemen that ſerved on Juries, *&c.* being built upon a falſe Interpretation of theſe Laws of King *William*, are but the mere Fancies and Imaginations of the Author from whom you borrowed them. And you your ſelf, (or rather the Dr. from whom you borrow theſe Notions,) have ſufficiently confuted this Fancy of the Tenants *in Capite* being the only Freeholders in the Kingdom; for at the End of that laſt Speech, you are fain to fall a Peg lower, and grant that all Military Tenants whatever, as well thoſe *in Capite* as all others that held of them by the like Service, were included in this Law of your Conquerors, and conſequently were capable of the like Privileges, either of ſerving in Parliament in Perſon, or elſe of being elected Knights of the Shire.

But taking the Words *Liberi Homines* in the largeſt Senſe, and as they are in the *Magna Charta* of King *John*, and *Hen.* III. *Chap.* 14. where it is ordained, that *Liber Homo non amercietur pro parvo delicto, niſi ſecundum modum illius delicti, ſalvo ſibi contenemento ſuo, & mercatar eodem modo, ſalva marchandiza, & villanus ſalvo Wanagio*; Upon which Words Sir *Edward Coke* in his Second Inſt. obſerves, that *Liber Homo* is here meant ſuch a one as enjoys a *Franc Tenement*, that is, any Sort of Freehold.

But pray go on to prove by ſome plainer Authorities, that the *Archbiſhops* and *Abbots*, &c. together with the Earls, Barons, and other Tenants *in Capite*, were the only Council of the Kingdom for the aſſeſſing of Taxes, and making Laws in the Times immediately ſucceeding the Reign of King *William* the Firſt.

M. I ſhall perform your Deſires, and will begin with the great Council or Parliament held at *Clarendon*, of which *Matt. Paris* tells us, *Anno Dom.* 1164. 10th of King *Hen.* II. *In preſentia Regis Henrici apud Clarendon 8 Calend. Feb. &c. de mandato ipſius Regis, preſentibus etiam Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, Comitibus, Baronibus, & Proceribus Regni, facta eſt Recognitio*; and which *Quadrilegus* and *Gervaſe* of *Canterbury*, compriſe under the general Terms of *Præſules, & Proceres Regni*; the Biſhops and Great Men of the Kingdom.

B. A. P. Page 32. *Fol.* 100. *n.* 20.

Lib. 1. c. 26. *X. Script. Coll.* 1385. *n.* 60. *A. D.* 1164.

What can be more clear by this Enumeration of the Conſtituent Parts of this full Parliament (as Mr. *Selden* and other Authors agree it to be) than that the Commons were then none of them, and that the *Clerus* and *Populus* in *Hoveden*, were only the *Clergy* and *Lay-Nobility*.

So

So likewiſe when theſe Conſtitutions were again renewed by this King at *Northampton*, the ſame Author tells us, (tho' by a Miſtake it is written *Nottingham*) That *Rex Pater ibi celebravit Magnum Concilium de Statutis Regni, & coram Rege Filio ſuo, & coram Archiepiſcopis, Epiſcopis, Comitibus & Baronibus Regni ſui*; which Council is more particularly recited by *Benedictus Abbas* in his Manuſcript Hiſtory (now in the *Cottonian* Library) *Anno* 1176. (which was the 25th *Hen.* II.) *Circa Feſtum Converſionis Sancti Pauli, venit Dominus Rex uſque Northampton, & Magnum ibi celebravit Concilium de Statutis Regni ſui coram Epiſcopis, & Comitibus, & Baronibus Terræ ſuæ; & coram eis per Concilium Regis Henrici Filii ſui, & per Concilium Comitum, & Baronum & Militum, & Hominum ſuorum hanc ſubſcriptam aſſiſam fecit*, &c. *Hoved. Fol.* 313. *a. n.* 50. *Sub Effigie Julii.*

And *Ralph de Diceto*, Dean of St. *Paul's*, (*A. D.* 1210.) a diligent Searcher into the Hiſtories and Tranſactions of his own and former Times, doth yet more fully declare the Meaning of *Abbot Benedict*, in the Account he gives of this Great Council, thus; *Rex juxta Conſilium Filii ſui Regis, coram Epiſcopis, Comitibus, Baronibus, Militibus & aliis Hominibus ſuis in hoc conſentientibus*, &c. *Hoc autem factum eſt apud Northamptonam, 7mo Kal. Febr.* From all which Authorities we may collect, that this Council at *Northampton*, as well as that at *Clarendon*, was a Great or Common Council of the whole Kingdom; to which were ſummoned of the Laity, only the Earls and Barons of his, (*viz.* the King's) Land, to which is alſo added, for the better explaining who were underſtood under theſe Titles of *Baronum, Militum, & Hominum ſuorum*; that is, ſuch *Tenants in Capite* as he pleaſed to ſummon, and were his Men or Military Tenants tho' not Knighted, and who held Lands either of the King, or his Son, to whom the King might aſſign divers of theſe Barons and Tenants *in Capite* to atturn Tenants to him, and to maintain his Court and Kingſhip; and the King's *Comites*, and *Barones terræ ſuæ*, were the Earls and Barons of his Kingdom that held immediately of him, or were his immediate Tenants *in Capite*; and that *Homo ſuus & homines ſui*, doth always ſignify the King's, or any other Lord's immediate Tenants by Knight's Service; for you may conſult *Spelman*'s Gloſſary, and *Du Freſne*'s Lexicon, under theſe Titles. *Imag. Hiſtor. Coll.* 588. *n.* 40. *B. A. J. Pag.* 204.

But farther, to confirm who were then the Conſtituent Members of our Great Councils, pray ſee the Title to the Aſſize of Foreſts under King *Richard* I. which *Hovedon* recites in theſe Words; *Hæc eſt Aſſiza Dom. Regis, & hæc ſunt præcepta de Foreſtis ſuis in Angliæ facta, per Aſſenſum & Conſilium Archiepiſcoporum, & Abbatum Comitum, & Baronum, & Militum totius Regni.* Where by *Militum* is to be underſtood not only thoſe Tenants *in Capite* that were Knighted, but alſo all other Tenants *in Capite* tho' not actually ſo. And if the Word ever ſignifies any other Perſons, they were not ordinary Freeholders, but *Liberè Tenentes in ſervitio Militari*, Freeholders by Military Service, as you may find in the Dr.'s Gloſſary, *Tit. Probi Comines, Milites*, &c. But pray remember alſo what Sir *H. Spelman* tells us in his Gloſſary, *Tit. Miles*, that theſe *Milites* (when put alone) were properly the *Liberi Tenentes*, or Tenants *in Capite*; *Qui non à Militari Cingulo, ſeda Feodo nomen ſumpſerunt.* So I think that no ingenious Man but will confeſs that all theſe Councils were General Councils or Parliaments of the whole Kingdom, conſiſting of no other Perſons than Tenants *in Capite*. *Hoved. Fol.* 445. *b. n.* 40. *B. A. J. Pag.* 201 *Pag.* 61.

F. To return an Anſwer to all your Authorities together, I muſt now repeat what I often ſaid, that there are no firm Arguments to be drawn from the doubtful Words, and general Expreſſions of our Ancient Hiſtorians; and I doubt not but to ſhew you, that all the whole Strength of your Reaſons conſiſts in this alone.

But ſince I have already ſpoken ſo much of the various Signification of the Word *Barones Regis & Regni*, I ſhall omit that, and now proceed to the reſt of the Words, which you think make ſo plain for you; and ſhall only obſerve at preſent, that theſe Words *Barones* and *Milites*, are always ſtretch'd or contracted, according as the Gentlemen of your Opinion find it beſt to ſuit with their Hypotheſis.

As for Example. If the Word *Barones* is put alone, then it muſt ſignify none but Great Barons, and Tenants *in Capite*; if it be joined with *Milites*, then by *Barones* muſt be only meant the Great *Barons* or *Peers*; and by *Milites*, thoſe *Tenants in Capite* who were not Lords. If any other Words follow *Milites*, then this

Word must signify only such Tenants *in Capite* as were Knighted. So likewise you deal with all other Words, tho' of never so comprehensive a Signification.

But why may not I with as much Reason affirm, That by *Barones* mentioned in these Authorities, is to be understood the *Barones* properly so called; and by the *Milites* all Military Tenants, if not the Knights of Shires, whether they were Tenants *in Capite*, or Feudatories to others: For *Radulphus de Diceto in Anno* 1040. in the Laws of *Malcolm* the Second, King of *Scots*, mentions certain *Milites, Vavasores, qui tenent de Baronibus terras suas*; and that not only Tenants *in Capite*, but all others of whomsoever they held, who were able to maintain themselves like Knights, might be then forced to receive Knighthood, appears by two Writs of 24th and 26th *Henry* III. as they are found in the Close Rolls, under this Title, *Forma de Militibus faciendis*; and I desire you would read the Writ it self.

Rot. Claus. 24th *H.* III. *m.* 8. *dorso* & *Rot. Claus.* 26th *H.* III. *ps.* 1. *m.* 6. *dorso.*

Rex Vicecomiti Northampton, Salutem. Præcipimus tibi quod per totam Ballivam tuam in Singulis bonis Villis, & similiter in pleno Comitatu tuo clamari facias, quod omnes illi de Comitatu tuo qui tenent Feodum Militis integrum, vel etiam minus quam Feodum integrum, dum tamen de Tenemento Suo tam Militari quam Socagio possint sustentari, & Milites non sunt, Sicut Tenementa sua deligunt, citra festum omnium Sanctorum Anno Regni Nostri 25. *Arma capiant & se Milites fieri faciant. Et si qui fuerint tales qui citra Terminum illum se Milites fieri non fecerint, Omnia Nomina corum Statim à Termino illo, & quantitatem, & Valorem tenementorum suorum nobis scire facias Teste Rege, apud Lewes* 25 *die Julii.*

Similiter Scribitur omnibus Vicecomitibus. From whence you may observe, that not only Tenants by Military Service, but also by Socage Tenure were then liable to Knighthood.

And as for, the Words *Homines Sui*, which you will have only to mean the King's Tenants *in Capite*, those Words have so equivocal a Significaton, that there is no Argument to be drawn from them; for they may as well signify all the King's Subjects sworn to him by Fealty and Allegiance, as Tenants by Homage, or Knight's Service only, as Sir *H. Spelman* in his Glossary observes upon the Word *Homo, dicitur de quovis Prædiorum Tenente, sive Socmanno, sive Militari*: And for this he cites the Book of *Ramsey*; and if *Suus* be added to *Homo*, it doth much alter the Case, as appears by the Words following, in the same place, *Dicitur Præterea de Quovis Ministro, & Subdito, & sæpe occurit hoc modo in Antiquis Privilegiis, non Solum Vassalos, & Tenentes, sed Famulos, & Subditos quoslibet Significans*; and for this he gives us several Authorities.

So that you see these Words do not only signify Tenants *in Capite*, but also any other Subjects, and so might take in the Knights of Shires, with the Citizens and Burgesses likewise, at least the Representatives of such Cities and Burroughs as held of the King *in Capite*, by your own Sense of these Words.

But I shall however say something of the rest of the Words you insist upon, out of Abbot *Benedict*, *viz. Barones terræ suæ*, which means no more, than *Regni sui* before-mentioned, and then it will signify no more, than that all the Barons of his Kingdom were summon'd to this Assembly. For the Signification of which Word, I can give Mr. *Selden*'s Authority for; who in his First Edition, 2d Part, hath this remarkable Passage, speaking of the several kinds of Barons, he says, "That besides the *Barones Regis*, there were Barons of Subjects holding, not of "the King, but by Mesnalty, who made a third Rank of such as were Lords of "Manors, *&c.* Out of this may be understood why, and in what Sense *Baronagium* "*Angliæ*, *Rex & Baronagium suum*, *& sine Assensu Baronagii sui*, so often occur "in our old Stories, taken as well for the King, and the whole State sometimes, "as for the greater Nobility.

P. 276, 277.

But if your Dr. had been pleased to have compared the Authors he quotes with others, nay, with the Title to the very Constitutions of *Clarendon* themselves, as he hath given them, as in his Appendix to his History out of *Quadrilogus*, this Objection would have been needless; for if you consult *Gervase* of *Canterbury*, he stiles the Parties to this Council *Præsules*, and *Proceres Anglicani Regni*. And as for *Matt. Paris*, pray observe that after the Word *Clerus* (which there coming immediately after the Bishops, Abbots, and Priors must needs signify the Inferior Clergy,) he expresses the Lay Orders thus; *Cum Comitibus Baronibus ac Proceribus cunctis*, where we may observe the Word *Proceres* here put distinct from *Barones*, which may very well signify not only the Less Tenants *in Capite*, but the Knights, Citizens and Burgesses, as I have already proved the Word *Proceres* does often signify,

Page 41. *Col.* 1395. *Fol.* 100.

ſignify, both in our Hiſtorians and Records; but the *Quadrilogus* gives us the Title of theſe Conſtitutions more exactly in theſe Words, *Facta eſt iſta Recognitio, coram Archiepiſcopis, Epiſcopis, & Clero, & Comitibus, & Proceribus Regni*; and in the next Line he ſays, That thoſe Cuſtoms were thus recognized, *per Archiepiſcopos, Epiſcopos, Comites, Barones & per Nobiliores, & Antiquiores Regni*; where he likewiſe diſtinguiſhes between the Biſhops and Inferior Clergy; and thoſe who in the firſt place he calls *Proceres Regni*, in the next he calls *Nobiliores & Antiquiores Regni*, by which he might mean the Knights of Shires, Citizens and Burgeſſes, who were called in the *Saxon* Times *Seniores & Sapientes*, as I have already proved: Now if the Inferior Clergy appeared by their Repreſentatives at this Council (ſince they could not then all come thither in Perſon any more than now;) to imagine that the Commons of *England* ſhould not be likewiſe there by their Repreſentatives of their own Order, is to deprive the Commons of that Right, which you cannot but allow to the Inferior Clergy.

To conclude; You your ſelf confeſs, that your Leſs *Tenants in Capite*, ſometimes called *Barones Minores*, were only nominally, and not properly *Barons* of the Kingdom, in the Senſe that Word is now taken; and if ſo, pray give me any ſatisfactory Reaſon, why other Commoners as well as they, *viz.* the Knights of Shires, Citizens and Burgeſſes, might not then likewiſe have had Places in our Great Councils or Parliaments.

M. I ſee you uſe your utmoſt endeavour from the various and equivocal Senſe of the Words in Queſtion between us, to prove that the Commons in the Senſe they are now taken, might be comprehended under the Words *Barones, Milites, & Homines ſui*, which it is very certain could not be, according to the Conſtitution of the Government at that time. And therefore I ſhall give you a very plain Anſwer to your Queſtion, why other Commoners as well as the leſſer Tenents *in Capite* could not be preſent, or have places in thoſe Great Councils, becauſe it was contrary to the received Cuſtom and Law of the Kingdom at that time, appears by thoſe Clauſes of King *John*'s Charter, which Dr. *B.* hath made uſe of with ſo good ſucceſs againſt Mr. *P.* and the Author of *Janus Anglorum*, &c. And therefore I deſire you would read them along with me, as they ſtand here in the Appendix to the Dr.'s Compleat Hiſtory of *England*; and as he hath tranſcribed them from an Ancient Manuſcript in *Bennet* College, and divided them into ſo many diſtinct Articles or Chapters; but thoſe we chiefly inſiſt upon are theſe. Page 131.

Article 14. *Nullum Scutagium vel Auxilium ponam in Regno noſtro niſi per Commune Conſilium Regni noſtri, niſi ad Corpus noſtrum redimendum, & ad Primogenitum filium noſtrum Militem faciendum, & ad Primogenitam filiam noſtram ſemel Maritandam, & ad hoc non fiet niſi rationabile Auxilium.*

15. *Simili modo fiat de Auxiliis de Civitate Londinenſi, & Civitas Londinenſis, habeat omnes antiquas Libertates & Liberas Conſuetudines ſuas, tam per terras quam per aquas.*

16. *Præterea Volumus, & concedimus quod omnes aliæ Civitates, & Burgi, & Villæ, & Barones de quinq; Portibus, & omnes Portus habeant omnes Libertates, & omnes Liberas conſuetudines ſuas; & ad habendum Commune Concilium Regni de Auxiliis aſſidendis, aliter quam in tribus caſibus prædictis.*

17. *Et de Scutagiis aſſidendis ſubmoneri faciemus Archiepiſcopos, Epiſcopos, Abbates, Comites, & Majores Barones Regni ſingillatim per Literas noſtras.*

18. *Et præterea faciemus ſubmoneri in generali per Vice Comites, & Ballivos noſtros omnes alios qui in Capite tenent de nobis, ad certum diem ſcilicet ad terminum quadraginta dierum ad minus, & ad certum locum, & in omnibus literis ſubmonitionis cauſam ſubmonitionis illius exponemus.*

19. *Et ſic facta ſubmonitione negotium procedat ad Diem aſſignatum ſecundum Conſilium eorum qui præſentes fuerint, quamvis non omnes ſubmoniti venerint.*

From which Ancient Monument we may draw theſe Concluſions.

1. That the King exerciſed a Royal Prerogative before this Charter of Aſſeſſing Aids, and Scutages upon all ſorts and degrees of Men, without the Aſſent of the Great or Common Council, (ſince called the Parliament) from doing which for the Future, the King by this Charter tied up his own Hand, unleſs in the Three Caſes here particularly reſerved.

2. That there is no mention of any other Members to be ſummoned to this Council, but the Archbiſhops, Biſhops, Abbots, Earls, and Greater Barons by particular Writs, and all the other Leſſer Tenents *in Capite* by one general Summons by

by the Sheriff. So that it is apparent, that the Great Councils before this time only conſiſted of ſuch Earls, Great Barons and Tenents *in Capite*, as the King by ſpecial Writ was pleaſed to ſummon; and this new way brought in a greater Number of the Tenants *in Capite* than ever had appeared before; ſo that if it ſhould be true, which you aſſert, that this Charter was no new Grant to the People of *England*, but a Confirmation of their Ancient Rights and Liberties, it muſt then neceſſarily follow, that *Great Lords* and *Tenants in Capite*, called ſometimes *Barones Minores*, were then the only Repreſentatives of the Commons.

J. E. M. G. P. 211.

And that the Inferior Tenant's Conſent was included in the Aſſent of his immediate Superior Lord, whoſe Preſence was required in thoſe Great Councils or Parliaments, need not, I think, be doubted; and I can give you, if need be, ſeveral Authorities to prove it. But pray obſerve further, that here is no mention at all in this Charter of any Citizens or Burgeſſes to be ſummoned to the Great Council, unleſs you will have them included under the general Title *of all others who hold in Capite*, and then none but ſuch Cities and Towns who held *in Capite* could pretend to ſend any Members; much leſs is there any mention of any Knights to be choſen for Counties, which certainly would have been particularly provided for by this Charter, had they then had any place in this Aſſembly. So that I think it is very plain, that the Commons were not otherwiſe repreſented than by theſe Tenants *in Capite* for the reſt of King *John*'s, and moſt part of King *Henry* IIId's Reign, for ought I can yet diſcern: For though this Charter was confirmed in the Second and Ninth Year of that King laſt mentioned, *per Commune Conſilium totius Regni*; yet there is likewiſe no mention made of any Knights and Citizens, or Burgeſſes.

B. A. P.

F. Before I anſwer this main Argument of yours, (which I freely grant carrieth the greateſt ſhew of probability of any you have yet brought) give me leave to take notice, that I think you are very much out in your firſt Concluſion, That before this Charter, the King exerciſed a Royal Prerogative of impoſing Taxes without the Aſſent of Parliament; for if you mean that this Exaction was exerciſed *de facto*, and from thence you would make it a Prerogative of the Crown, I grant this was true, not only before, but after this Charter, *before the Statute de Tallagio non concedendo* was made; but if you mean *de Jure*, I affirm that our Kings were as much tied up by the 55th Law of *William* the Firſt, (which you have already cited) from Levying any *unjuſt Taxes*, or *Exactions*, *ſine Communi Conſilio totius Regni*, as they could be afterwards by any other ſubſequent Law that could be made.

But I ſhall proceed to anſwer the Authority you have now brought from this Clauſe in King *John*'s Charter to prove, That none but *Tenants in Capite* had any place in our great Councils, or Parliaments. But tho' I confeſs the Charters of *Henry* III. and Confirmations of *Edward* I. are the ſame with this in the moſt material Parts; yet there are ſeveral Clauſes (of which this Clauſe in queſtion is one) which are in King *John*'s Charter, and yet are totally omitted out of both thoſe of *Henry* III. as I ſhall ſhew you hereafter. So that let the Senſe of this Place be what it will, I defie you to ſhew me any great Council of the Kingdom, that was ever ſummoned according to this Imaginary Model of yours; and that I do not ſpeak without Book, that Parliament or Council of 9. *Henry* III. held but 11 Years after King *John*'s Charter was confirmed; *Mat. Paris* (as I have already obſerved) tells us, it conſiſted of *Clerus, & Populus cum Magnatibus Regionis.*

But give me leave to read this Clauſe, according as your Dr. himſelf hath Printed and Tranſcribed it, and as your ſelf have now read it; and I doubt not, but it will appear plain enough, that the Clauſe you inſiſt on in this Charter, doth not at all concern the *great general Council* of the *Kingdom*; and for the proof of this, I deſire you only to obſerve, that by the 15th and 16th Clauſes of this Charter you have now read, both the *City of London*, and all other *Cites*, *Burroughs*, and *Towns*, had a Right to make a part of the common Council of the Kingdom for the Aſſeſſment of Aids, (otherwiſe than in the Three Caſes there excepted.) For proof of this, pray take your Dr.'s Paraphraſe to this Clauſe along with you in his Appendix to his compleat Hiſtory of *England*, viz. That they, *viz.* the Citizens, Burgeſſes, and Cinque Ports *ſhall ſend their Repreſentatives or Commiſſioners to the Common Council of the Kingdom, for the Aſſeſſment of Aids*: So that according to his Conceſſion, there muſt have been Citizens and Burgeſſes in the great

Pag. 131. E.

Council

Council, in the Reign of King *John*; and if ſo, I deſire you to tell me whether thoſe Gentlemen were Commoners or not?

But I will not inſiſt too much upon his Conceſſions: Since, perhaps he may ſay he did not make that Paraphraſe upon *Magna Charta*, but that it was given him by a Friend; but I think it is very plain from the Words themſelves, which point out a Diſtinction between the Common Council of the whole Kingdom, mentioned in the firſt Clauſe, which was to meet to Grant or Aſſeſs Aids or Subſidies; and that other Council or Aſſembly, conſiſting of all the Tenants *in Capite*, which by the 17th and 18th Clauſes of that Charter, were to meet to aſſeſs *Eſcuage*, and to do ſuch other Buſineſs as was expreſs'd in their Summons. So that nothing ſeems plainer to me, than that this Aſſembly mentioned in this Charter, for aſſeſſing Eſcuage, was a diſtinct Council from the great Council of the Kingdom, which was appointed for the granting of other Taxes, called *Auxilia*, and for the making of Laws.

M. I confeſs this Gloſs of yours ſeems at firſt ſight very plauſible, and agreeable enough to the way of Reading and Pointing with which the Dr. himſelf publiſhed this Charter; but for all that, I much doubt whether you are in the right, or not; therefore pray give me leave to put off this Debate till our next Meeting, ſince it now grows late; and in the mean while I will take time to conſider the Arguments and Authorities you have now made uſe of.

F. Pray take your own time, but do not defer it above a day or two; for I have a great mind to have this Queſtion diſpatch'd off our hands: I am your Servant.

M. Good Night, Sir.

Add, in Page 284. l. 12. as follows.

But that the Houſe of Commons were anciently often comprehended under the ſtile of *Grantz* (which is the ſame with *Magnates* in *Latin*) pray conſult the Parliament Rolls of *Edward* III. where you will find the 4*th* of that King, this Paſſage; *& eſt aſſentu, & accorde per noſtre & Seigneur le Roy, & tous les Grantz in pleyn Parliament*; (that is, in full Parliament, where both Lords and Commons were preſent,) that the Proceedings of the Lords againſt thoſe that were no Peers ſhould not be drawn into Example, *&c.* Now pray ſee the Commentaries of the moſt Learned and Reverend Author of the Grand Queſtion, upon theſe Words in this Record; 'This hath all the Formality of an Act of Parliament, and therefore 'all the Eſtates were preſent: So likewiſe in the ſame Year, in the next Roll but 'one; *Accorde eſt per noſtre Seigneur le Roy, & ſon Counſeil in Plein Parliament*; 'which was an Act of Parliament concerning thoſe that had followed the Earl of 'Lancaſter. So in the 5th of this King, we have the particular mention of the 'Biſhops, as ſome of thoſe who make a full Parliament; *Accorde eſt per noſtre 'Seigneur le Roy*, Prelates, Counts, Barons, *& autres Grands de Roialme in pleyn 'Parliament*. So in the 6th of *Edward* III. the Archbiſhop of *Canterbury* made 'his Oration in *pleyn Parliament*, which is thus explained, *en le preſence noſtre 'Seigneur le Roy, & tous les Prelats, & autres Grantz.* And in another Roll, *ſi 'eſt accorde & aſſentu per tous in pleyn Parliament*; and who theſe were, we are 'told in the ſame Roll; *viz. les Prelats, Counts, Barons, & tous les autres Summons à meſme Parliament.*

N. 6. P. 115. N. 8. N. 10. N. 5. N. 9.

Now this is the cleareſt Explication of theſe Words in full Parliament, *viz.* in the preſence of all thoſe who were Summon'd; ſo that if the Commons were then Summon'd to this Parliament, (as certainly they were) they muſt have given their Aſſents under the Title of *Grantz*; ſince the Prelates, Earls, and Barons were particularly mentioned before.

Bibliotheca

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DIALOGUE VII.

Whether the *Commons* of *England*, represented by *Knights*, *Citizens*, and *Burgesses* in *Parliament*, were one of the Three *Estates* in *Parliament*, before the 49th of *Henry* III. or 18th of *Edw.* I.

PART II.

F. YOU are welcome, Sir, but I did not expect to see you again so soon.

M. I beg your pardon if I come unseasonably; but the truth is, I have so great a desire to conclude what we began upon, that important Subject we last discoursed of, that I could not be at ease till I had done my endeavour to give you Satisfaction therein, if it be possible.

But to come to the matter that we now meet about: I must now tell you again, that tho' I confess this Gloss of yours upon King *John*'s Charter, seems plausible at first sight, nay, is agreeable to the Dr's own way of dividing and reading the several Articles of this Charter; yet upon better Consideration, I can see no good reason for making a full, or at least a half stop in the 16th Article, after these Words, *omnes liberas consuetudines suas*; adding the rest that follows, *& ad habendum Commune Concilium, &c.* to the following Clause, *& de scutagiis assidendis, &c.* much less for supposing as you do, without any ground, that there were two sorts of Common Councils, one for assessing Escuage, and the other for granting all other Aids and Taxes. And then, if read otherwise, it will plainly appear that it was one and the same Council of the Kingdom that did then both grant Aids to the Crown, and assess Escuage *ratione tenuræ*; which I am the more inclined to believe from the Fourteenth Clause here cited, which says, That no Scutage or Aids shall be imposed, unless by the Common Council of the Kingdom. Now to what purpose is this so express'd, if there was to be one Council for the granting of Aids, and another for the assessing of Escuage: So that if this Common Council of the Tenants *in Capite* might grant Aids, and assess Escuage upon the Subjects (unless in the Case before excepted) I see no reason why they should not be the only Council, for the giving their Assent to Laws also; and consequently of concluding not only their own Tenants, but the King's Tenants in *Petty Sergeanty* and Soccage, nay, the Tenants of any other Persons whatsoever.

And though I have seriously considered Mr. *P*'s Appendix to the Rights of the Commons asserted, and Dr. *B*'s Answer to it, as also his Animadversions upon *Jani Anglorum, &c.* Yet can I not see any colour of an Argument for making any distinction between the King's *Curia* of his great Lords and Tenants *in Capite*, and the Great or Common Council of the Kingdom; but that they were then all one and

and the ſame. It would be tedious to me, as well as you, to run over all the particular Authorities and Examples which have been urged *Pro* and *Con* in this Queſtion. But I deſire you, or your Friend Mr. *P.* to ſhew me that there was any *Biſhops*, *Earls*, *Barons*, or other Members of Parliament in the Times we now treat of, that had any Place, or Vote therein, but according to their Tenure, and the ancient Cuſtom of all Feudal Tenants, who by the *German*, *Gothic*, and *Lombard* Feudal Laws (which in ſubſtance were the ſame with ours) were always ſummoned to the Court of the King their Supreme Lord.

But farther, to prove that this Council for Aſſeſſing Eſcuage, was no other than the great Council of Parliament of thoſe Tenants *in Capite*, appears from *Littleton*'s Tenures, where in his Second Book, Sect. 97. he tells us, *That after an Expedition Royal into* Scotland, *Eſcuage ſhall be Aſſeſſed in Parliament upon all thoſe who failed to do their Service in that Expedition.* So that if the Parliament did then Aſſeſs Eſcuage, I deſire to know why they might not do it in the Reign of King *John*, if this great Council of the Archbiſhops, Biſhops, great Lords and Tenants in *Capite*, were the Common Council of the whole Kingdom in thoſe Times? Yet that Eſcuage was not always Aſſeſſed in Parliament after this Charter of King *John*, but that the King by his own Prerogative did often grant his Tenants *in Capite* a Power to take Scutage of their Tenants without any Aſſent in Parliament, the Dr. hath given you above a dozen Examples in the Reigns of *Henry* III. and King *John*. *B. A. P. Page* 117.

Thus it was for Aids and Scutage Service; but if it was for Scutage impoſed in Parliament as a Tax upon Land by the Common Council of the Nation, then the Tenants *in Capite* were not only the ſole Grantors, but the Collectors of that Scutage too, from their Meſne Tenants: And the Writs to the Sheriff were different from thoſe in Scutage Service, though the ſame in Subſtance; as likewiſe appears by thoſe Records the Dr. hath there given us. *Ib. p.* 121.

F. I doubt not but I ſhall make good my Aſſertion, and ſhall be able t odefend what Mr. P. hath in his Learned Treatiſe aſſerted concerning this matter. In the firſt place, I muſt ſtick to that way of reading and pointing of this Clauſe in diſpute, ſince it is not only agreeable to the Dr's Manuſcript Copy, but alſo to the old *French* Copy, publiſhed by Father *D'Archy* in his *Spicilegium*, *Vol.* 13. which is written in the *French* of that Time: But to anſwer your Objection againſt this Interpretation, you your ſelf have in great part helped me to do it, by that true Diſtinction you have now made between a Scutage as an Aid or Tax, and as a Service; the latter of which you aſſert might be granted to the King, to be raiſed by his Tenants *in Capite* upon their Under-Tenants; whereas the former was only grantable in Parliament by the Common Council of the whole Nation. Which Tax, I affirm, was always granted to the King, and impoſed by the Common Council of the Kingdom only, and not by the Tenants *in Capite* alone, before the Expedition was undertaken. Whereas *Scutage Service* (conſidered as a Payment of ſo much Money) was never due or payable, till the Expedition was ended; and then only upon ſuch as had failed to ſerve in Perſon, or by ſufficient Deputies; and was then to be aſſeſſed by the Tenants *in Capite* alone.

And though I grant it may ſeem to have been a Prerogative as you call it, exerciſed by ſome of our Kings, ſometimes to grant his Tenants *in Capite*, a Licenſe to take Scutage of their Tenants, without the Aſſent of the Great Council of the Kingdom; yet ſuch Payments or Aſſeſſments were either according to Law, and the expreſs Grant of this Charter it ſelf; as is that Writ of King *John* to the Sheriff of *Gloceſterſhire*, for the Aſſeſſing of an Aid or Scutage Service of three Marks on each Scute upon the Tenants of *Saher*, Earl of *Wincheſter*, for making his Eldeſt Son a Knight, and which the ſaid Earl might have claimed of his Tenants by the Common Law, as alſo by the 20th Article of that Charter. But for a Scutage Tax *Littleton* tells us, Lib. 2. Sect. 101. *That becauſe ſuch Tenements came at firſt from the Lords, it is Reaſon they ſhould have Eſcuage of their Tenants; and the Lords in ſuch caſe might diſtrain for the Eſcuage ſo Aſſeſſed by Parliament; or in ſome Caſes they may have the King's Writ directed to the Sheriffs of the ſame County, &c. to Levy ſuch Eſcuages for them, as appears by the Regiſter.* *B. A. P. Page* 117.

But if either King *John*, or King *Henry* III. granted Writs to levy Eſcuage upon the Under-Tenants of the great Lords, and Tenants *in Capite*, without their own Conſent in Parliament, this ought to be no more cited as a Precedent, than any other illegal Acts committed by thoſe Kings; ſince, as our Records and Hiſtories

tell us, it was ſuch illegal Proceedings which were the Cauſe of the Barons Wars. And it is expreſly againſt the Words of this Charter of King *John*, which you have now quoted, *viz. nullum Scutagium vel Auxilium ponam in Regno noſtro, niſi per Commune Conſilium Regni noſtri.*

So that notwithſtanding all you have yet ſaid, it doth not appear to me, how Scutage, when given as a Tax upon Knights Fees alone, and to be levyed not only from the Tenants *in Capite* themſelves, but their Under-Tenants; as alſo from the Tenants of them, who though they held *in Capite*, yet held not by Knights Service; ſuch as were the Tenants in *Petty Serjeanty*, and thoſe who held of the King in Chief as of ſeveral Honours, and not of his Crown as *in Capite*, could ever charge ſuch Tenants without their Conſents given either by themſelves, or their lawful Repreſentatives; much leſs could your Tenants *in Capite* Tax or Charge ſuch as did not hold *in Capite* themſelves, *viz.* thoſe Abbots and Priors who held Lands in Right of their Monaſteries in *Franc Almoigne*, and who, together with their Under-Tenants made about Two third Parts of all the Abby-Lands in *England*; or could Tax thoſe, who not holding by Knights Service at all, but by Tenure in Soccage, or Fee Farm, did not hold their Lands as Knights Fees, and therefore could never be taxed by your Tenants *in Capite* for ſo many Knights Fees, or Parts thereof. And *Bracton* (who lived at this very Time) had diſtinguiſhed to no purpoſe between thoſe Common Services which all Tenants owe their Lords, and the general Taxes or Charges impoſed by the Common Conſent of the whole Kingdom. The Words are very remarkable, pray read them. *Sunt quædam Communes preſtationes quæ ſervitia non dicuntur, nec de conſuetudine veniunt niſi cum neceſſitas intervenerit, vel cum* Rex venerit, ſicut ſunt Hidagia, Corragia, Carvagia, & alia plura de neceſſitate & ex conſenſu Communi totius Regni introducta quæ ad Dominum feodi non pertinent.* And therefore I cannot ſee any Reaſon why the great Lords, and Tenants *in Capite*, ſhould have ever Power to lay a general Tax upon the whole Kingdom, not the Tenth Part of which did then hold of them by Knights Service. So that nothing ſeems plainer to me, than that there was (as our Ancient Hiſtorians tell us) a diſtinct Court, which was held anciently three Times every Year, *viz.* at *Eaſter*, *Whitſuntide*, and *Chriſtmas*; and then the King was attended by all the Biſhops, great Lords, and other *Tenants in Capite*, and this was called *Curia*, or *Conſilium Regis*; and if any Difference of Right did ariſe between the King and his Tenants, or between Tenant and Tenant, here it was to be heard and determined; and many other Things were there acted and done, in relation to the Kings Barons, or Tenants *in Capite* only.

Bract. lib. 2. c. 16. p. 37.

* *i. e.* When the King comes to Parliament.

P. R. C. Page 131.

But under Favour, this was not the *Commune Conſilium totius Regni*, or Parliament (as we now call it;) for the King held this Court *ex More*, or by Cuſtom, without any particular Summons, as *Simon* of *Durham*, and *Florence* of *Worceſter*, and divers other Writers of the Lives of our firſt *Norman* Kings, do ſhew us. But when they take notice of the meeting of the *Commune Conſilium totius Regni*, their Expreſſions alter, and then they ſay, that, *Rex aſcivit*, as it is in *Ordericus Vitalis*, *Ex præcepto Regis convenerunt:* or as *Eadmerus* —— *Rex Sanctione ſua adunavit.* And *Matt. Weſtm.* of latter Times takes notice of this Union, or Meeting of this *Curia*, or Aſſembly of Tenants *in Capite*, together with the Great Council or Parliament, in his Hiſtory of *Hen.* III. Where relating how the King again confirmed the great Charter in a Parliament, *Anno Domini* 1252. being the 37th of his Reign, he hath theſe Words, *In quindena Paſchæ* (*adunato magno Parliamento*, &c.) So that it ſeems plain to me, that by this uniting of the great or whole Parliament, muſt be underſtood the Conjunction of both Councils together; and therefore, when this Council of Tenants *in Capite*, that thus met *ex More* took upon them to aſſeſs Eſcuage, and tranſact other Matters of Conſequence, without the Conſent of the major Part of the *Tenants in Capite*, who often failed to appear at theſe Courts, or Aſſemblies held *ex More*, it was then and not before, expreſly provided by this Charter of King *John*, that Eſcuage ſhould not be aſſeſſed for the future, without Summons, or Notice given of it to all the *Tenants in Capite*, who had Right to be there.

Pag. 68.

M. I ſee you would fain prove that there was a Council or Aſſembly of great Lords and *Tenants in Capite*, diſtinct from the Parliament, and which met *ex More*, and that theſe were the Perſons, who were by this Charter to aſſemble for the aſſeſſing of Eſcuage; which is a meer precarious Hypotheſis; nor can you, or thoſe, from whom you borrow this Notion, make it out from any good Authority;

for I have already proved, that the *Barones Regis & Regni*, were the ſame Perſons; and that uſually the Barons or Tenants *in Capite* of what Quality ſoever, did repair to the King's Court at *Chriſtmas*, *Eaſter*, and *Whitſunday*, doth appear to have been the Cuſtom of thoſe Times, from the Teſtimonies of our ancient Hiſtorians, and which you your ſelf alſo alledge. *B. A. P. Page* 113.

But to prove by Examples out of the Authors you have made uſe of, that the Biſhops, great Barons, and *Tenants in Capite*, were then alone the great Council of the Kingdom, pray read *Eadmerus* ſpeaking thus; *Celebratum eſt Concilium in Eccleſiâ Beati Petri in occidentali parte juxta Londinum ſita, Communi Conſenſu Epiſcoporum, Abbatum, & Principium totius Regni, & huic Conventui affuerunt Primates Regni utriuſque ordinis.* And at this Meeting were preſent, the *Prime Men* of the whole Kingdom of both Orders: In this Council the Biſhops and Barons are called the Principal or Chief Men of the Kingdom; yet, theſe were all the King's Barons, they all held of him *in Capite*, as did all the Chief Men of the Kingdom. So likewiſe in another Meeting under this King *Hen.* I. when Archbiſhop *Anſelm* was to give his Anſwer to the King, according to the Advice of the Biſhops, and chief Men of the Kingdom, the ſame Author tells us of *Anſelm*, that at *Eaſter*, *ad Curiam venit, Communis Concilii vocem accipit*, &c. Now pray tell me what Common Council this was, of the Biſhops and Chief Men of the Kingdom, that *Anſelm* referred himſelf to? Was it not *ex More*, by Cuſtom? You cannot find in *Eadmer* any Summons to it, neither *Rex aſcivit*, nor *præcepto Regis convenerunt*, nor *Rex ſanctione ſua adunavit*. In ſhort, not to multiply Examples, look where you will in *Eadmerus*, or any other of the ancient Hiſtorians you have cited; and you will ſtill find, that the Perſons who met *ex More*, and without any Summons, were the ſame who aſſembled by the King's Summons at other Times, that is, the *Principes*, and *Epiſcopi Regni* or *Terræ*, called more generally, *Primates utriuſque ordinis*, or the *Barones*, or *Majores Regni*, who did at theſe great Feaſts *pro more*, go to Court, and there hold a ſolemn *Curia*, or great Council; and that theſe made up the *Univerſity*, or whole Body of the Kingdom; pray ſee what *Mat. Paris* ſays of ſuch an Aſſembly. *In die Pentecoſtes Dominus Rex Anglorum Londini Feſtum tenens magnum, & ſereniſſimum, tunc compoſitâ per Regni Univerſitatem Eleganti Epiſtolâ*, &c. This was about the Pope's Exactions, as hath been before delivered: And *Hen.* III. in his Letter to the Pope, calls the ſame Perſons *Magnates Angliæ*, which in his Letter to the Cardinals about the ſame Matter, he calls *Magnates Noſtri*, as you may ſee in the former Citations of them. *Fol.* 67. *n.* 20. *Fol.* 69. *Fol.* 658. *n.* 40.

F. But pray give me leave to ask you this Queſtion; Might not our firſt *Norman* Kings often Summon the Common Council of the Kingdom at one of the ſaid uſual Feaſts, ſince it was ſo much for the Conveniency of the Biſhops, great Lords, and Tenants *in Capite*, (who I grant, were then all Members of the Great Council) to meet all the reſt of the Kingdom, or Repreſentatives of the Commons, at the ſame Time, though the Writers you have quoted may not mention their being ſummoned at all? And as for the Writs of Summons, thoſe of much latter Parliaments being loſt, how can it be expected we ſhould now prove their being ſummoned ſo many Years before?

M. I confeſs it might be ſo, that upon extraordinary Buſineſs, and when the Occaſion was great, and the King deſired a greater and fuller Appearance, they might alſo receive an expreſs Summons at thoſe Times. But then I muſt deſire you to ſhew me any mention of a Summons to any of theſe Common Councils, which when called at other Times, are moſt conſtantly mentioned in this Author. And I deſire to know of you, what you will ſay to thoſe Words *pro more convenit*, which is ſpoken of the moſt general Councils, when the Community of the Kingdom met at the King's Court? You cannot deny, but that the Tenants *in Capite*, were the King's *Barones*, *Milites*, *Magnates*, &c. Upon this we will joyn Iſſue; and I affirm (without bringing Proofs which are infinite in this Caſe) that all the Biſhops, Earls, and Barons of *England*, did hold their Lands, Earldoms, and Baronies of the Crown, or (which is all one) of the King, as of his Perſon, and that was *in Capite*. *B. A. P. Pag.* 115.

William the Conqueror, as I ſaid before, divided moſt of the Lands in *England* amongſt his great Followers, to hold of him; he made Earls and Barons, ſuch as he pleaſed: They and their Deſcendants held upon the ſame Terms with the firſt Grantors, which was, to find ſo many Horſe and Arms, and do ſuch and ſuch Services;

vices; both Titles and Lands were Forfeitable for Treaſon or Felony to the King; did Homage for them; and every Biſhop, Earl and Baron of *England*, was in thoſe Circumſtances, and held of the King after this manner.

Other Lands were given to other Perſons for meaner Services; as to his *Woodwards*, *Foreſters*, *Huntſmen*, *Falconers*, *Cooks*, *Chamberlains*, *Goldſmiths*, *Bayliffs of Mannors* in his own Hands, and many other Officers, which in *Doomſday-Book*, are called, *Terræ Thanorum Regis*, and ſometimes *Servientium Regis*; And I doubt not, whatever the Notion of *Petyt Sergeanty* now is, but that originally, this holding of Lands was the true Tenure; not but preſenting the Lord with a Bow and Arrow, a pair of Spurs every Year, *&c.* might alſo be called *Petyt Serjeanty*, though not ſo properly as the other.

F. Not to multiply Words to no purpoſe, I think your Reply is far from being ſatisfactory; for in the firſt place, it is very unreaſonable to demand that we ſhould now ſhew the expreſs Summons to theſe Common Councils which were not held *de more*; ſince you know that all ancient Records of that kind are deſtroy'd and loſt; for if we could produce them at this Day, the difference between us and thoſe of your Opinion, would quickly be at an end; as appears by thoſe great Councils, which are ſaid expreſly, by the Hiſtorians I have cited, to have been ſummoned, and yet no ſuch Writs of Summons are to be found; nor is it any good Argument, that becauſe our ancient Hiſtorians mention no diſtinct Summons to the great Councils, when met at the uſual Times of the meeting of the Tenants *in Capite*, that therefore there were none ſuch, ſince we find they often paſs by much more material Matters than this.

And though I grant that the Tenants *in Capite* were then part of the great Council of the *Barones, Milites, & Magnates Regni*; yet does it not follow for all this, that none but the King's Barons, and Tenants *in Capite*, were Members of the great Council of the Kingdom; ſince there might be in thoſe Times other conſiderable Freeholders, who (though they held their Lands of the Tenants *in Capite*, yet) might be there as Knights of Shires, or elſe appear in Perſon at thoſe Aſſemblies as well as the other; and beſides, there were others, who, though they did not hold of the King *in Capite*, but of ſome great Honour or Caſtle, or elſe of ſome Abbot or Prior; yet were Men of very great Eſtates, and very numerous; all which muſt otherwiſe have had their Lands tax'd, and Laws made for them, without the Conſent of themſelves, or any to repreſent them. Nor is your Aſſertion at all true, That *William* the Conqueror divided moſt of the Lands in *England* to be held of him *in Capite*. For beſides thoſe Servants and Officers you laſt mentioned, near Two thirds of the Lands of the Abbies and Priories in *England* were not held, as alſo much other Lands in *Kent*, and other Countries, *per Baroniam*, or Knights Service, but in *libera Eleemoſina* only, or Soccage, as I have already prov'd; and conſequently neither they nor their Tenants could, according to your Hypotheſis, have any Repreſentatives in Parliament.

And farther, you your ſelf grant, that thoſe Lands you mention, which were given out by your Conqueror, to his *Woodwards*, *Foreſters*, &c. did not capacitate them to appear in Parliament, ſince their Tenure was only by *Petit Serjeanty*, and not by Knights Service: Nor could they become the King's Tenants in ancient Demeſne, becauſe ſuch Tenants held wholly by Soccage Tenure; whereas it appears plainly by *Littleton*, that Tenants in *Petit Serjeanty* were ſubject to Wardſhip, Marriage, and Relief. So that whoever will but conſider, that near half the Lands in *England* were held by Biſhops, Abbots, Priors, *&c.* and of whom not a Third Part held by Knights Service of the Crown; and will then likewiſe conſider what a vaſt number of Tenants thoſe Abbots, Priors, Deans and Chapters (who were not Tenants *in Capite* at all) muſt have had; and who either held Eſtates in Fee, or elſe for Life under them in Soccage, as well as by Knights Service; as alſo all the other ſorts of Tenures I have already mentioned, which either held of the King as of ſome Honour or Caſtle, or elſe of other Meſne Lords by other Tenures than Knight's Service; muſt certainly conclude, that not above one half of the Lands of the whole Kingdom was held either immediately of the King, or elſe of other Meſne Lords by that Tenure. So that if all theſe Perſons, which were far the greater Number of the Free-holders in *England*, ſhould have been thus excluded from having any thing to do in our great Councils; I doubt not but we ſhould have found ſufficient Clamour in our Hiſtories againſt ſo unjuſt a Conſtitution; and when the whole

whole Body of the Kingdom was in Arms againſt King *John* at *Running-Mead*, they would likewiſe have inſerted a Clauſe for themſelves, if they had not had their Suffrages there before, either by themſelves in their own Perſons, or by their lawful Repreſentatives. And therefore upon the whole Matter, I durſt leave it to the Conſideration of any unprejudiced Man, whether it is not much more probable, that the Conſtitution of Knights of Shires, Citizens and Burgeſſes, appearing in Parliament, ſhould be much more ancient than the Time you aſſign; than that ſo ſmall a Body of Men as the Biſhops, Lords, and Tenants *in Capite*, ſhould repreſent all the reſt of the Freeholders and People of *England*, who never held of them by Knights Service at all. Nor have you yet anſwered the Quotation I have brought out of *Bracton* in my laſt Diſcourſe to the contrary. And whoever will but conſult that Author in his Chapter of Tenures, will find, that the Tenants *in Capite* were ſo far from having a Power of charging all the Meſne Tenants at their Pleaſure, that in his Chapter *de Tenuris*, it appears, that a Meſne Tenant *in Capite* having purchaſed an Eſtate for a valuable Conſideration, was liable to no other Services and Conditions, than what his Tenure expreſs'd; which once performed, the Lord had no more to ſay to him: And if ſo be he laid any further Burthens upon him, he might have had a Writ of Acquittal out of the King's Court againſt him directed to the Sheriffs; ſeveral Forms of which you may ſee in *Glanville*, and in the old Regiſter.

M. We are not to reſt upon meer Probabilities; for ſome things that now appear to us unreaſonable at this Time, might then be very juſt. For if the Feudatary Tenants of the Biſhops, Barons, and other Tenants *in Capite*, were well enough contented with the Conſtitution of the Kingdom as it then was; and that it plainly appears by matter of Fact, that there was but one Common Council for the whole Kingdom; and that, of the Biſhops, Abbots, Great Lords and Leſs Tenants *in Capite* only, it is in vain to argue of any Unreaſonableneſs in, or Inconveniencies that might ariſe from ſuch a Conſtitution, though perhaps a great part of the Kingdom did not hold *in Capite*, nor yet by Knight's Service; and therefore though the Feudatary Tenants of the Tenants *in Capite*, were upon the Performance of their Services acquitted of all other Charges; yet this was ſtill to be underſtood only of ſuch ordinary Services as thoſe Tenants were to perform by virtue of their Tenures, ſuch as was Scutage Service, or the attending upon their Lords when they went out to War along with the King; but did not extend to ſuch Scutages as were granted in Parliament, or as a Tax upon Land by the common Conſent of the Nation; for then the Tenants *in Capite* were not only the Grantors, but the Collectors too, of ſuch Scutage Tax, from their Military Tenants; and the Writs to the Sheriffs were different from thoſe for Scutage Service. And for proof of this, I deſire you would peruſe that Writ which the Doctor quotes of the 19th of *Henry* III. which is ſtill to be ſeen in the Cloſe Roll of that Year. *Rex Vice Comiti Suſſex ſalutem. Sciat quod Archiepiſcopi, Epiſcopi, Abbates, Priores, Comites, Barones, & omnes alii de Regno noſtro Angliæ, qui de nobis tenent in Capite, ſpontanea voluntate ſua, & ſine Conſuetudine, conceſſerunt nobis Efficax Auxilium ad magna Negotia noſtra Expedienda, unde proviſum eſt de Conſilio illorum, quod habeamus de feodis Militum & Wardis, quæ de nobis Tenent in Capite duas Marcas ad predictum Auxilium faciendum, & unde providerint reddere nobis unam medietatem ante Feſtum ſancti Michaelis, Anno Regni* 19. *& aliam Medietatem ad Paſche, Anno Regni noſtri* 20. *Ideo tibi precipimus quod* * *ad Mandatum venerabilis Patris* R. *Ciceſtren. Epiſcopi Cancellarii noſtri, ſine dilatione Diſtringas omnes Milites & liberos Tenentes, qui de eo Tenent per Servicium Militare in Balliva tua, ad reddendum ei de ſingulis feodis militum, & Wardis duas Marcas, ad predictum Auxilium nobis per manum ſuam Reddendum in Terminis predictis.*

Cl. 19. *H.* 3: m. 8. *dorſo.*

* This Mandate was not given him as Chancellor, but as a Tenant *in Capite.*

Sic ſcribitur pro aliis Epiſcopis, Abbatibus, Prioribus & Magnatibus.

Now I deſire you to tell me whether any thing can be more plain, than that this Tax was granted by a Common Council of the Kingdom, according to that Clauſe of King *John*'s Charter I have now cited: Wherein it is firſt eſpecially provided, that no Aid or Scutage ſhall be impoſed upon the Kingdom, unleſs by the Common Council thereof; and yet you ſee by this Writ, that the Archbiſhops, *&c.* with the Barons there mentioned, together with the other Tenants *in Capite* alone, granted an Aid or Scutage Tax of two Marks for every Knights Fee which they held of the King; and that by virtue there-

of

of not only thoſe Knights Fees they held in their Hands, but alſo all thoſe Subfeudatary Tenants called here Freeholders, who held of them by Knight's Service, were likewiſe charged for every Knight's Fee ſo held, the like Sum of two Marks. Now I think nothing can be more plain from this Record, than that this was a Common Council of the whole Kingdom, and yet conſiſted of Tenants *in Capite* only; and therefore I deſire you to ſhew me ſome better Proofs than you yet have done, that theſe Tenants *in Capite* ever made a diſtinct Council, different from the Common Council of the whole Kingdom.

F. I grant this ſeems at firſt ſight to be a good Authority for you; but I doubt not for all that, to prove, that it makes wholly againſt you; and will, together with thoſe other Proofs I ſhall urge, make out this difference between the two ſorts of Councils, I have already aſſerted; and therefore I muſt tell you, that there is no neceſſity of underſtanding the Words *de Conſilio illorum* (mentioned in this Record) to refer to the Common Council of the whole Kingdom, it not being here ſaid to be granted *per Commune Concilium totius Regni*; and then there can no more be proved from this Record, than that a Common Council of the Tenants *in Capite*, took upon themſelves an unuſual Power, *ſine conſuetudine*, as the Writ here mentions, in thoſe Times, to charge not only themſelves, but their Under-Tenants alſo: And that even this was an Encroachment, appears by the Statute, *De tallagio non concedendo*, made 25th of *Edward* I. whereby it is expreſly forbid that any Talliage or Subſidy ſhould be laid upon the Kingdom *ſine voluntate & aſſenſu Archiepiſcorum, Epiſcoporum, Comitum, Baronum, Militum, Burgenſium, & aliorum liberorum hominem de Regno noſtro.* Now pray read my Lord *Cook*'s Reaſon in his 2d Inſtit. why this Statute was made, 'The 2d Cauſe (ſays he) was, That the 'King the Year before, had taken a Talliage of all Cities and Boroughs, with- 'out Aſſent of Parliament, whereupon aroſe a great Murmuring and Diſcontent 'among the Commons: For pacifying which Diſcord between the King and 'his Nobles, and for the quieting of the Commons, and for a perpetual and 'conſtant Law for ever after, both in this and other-like Caſes, this Act was 'made, *&c.* being no other (as the ſame Author tells us in the Concluſion 'of his Comment on this Statute,) than a Reſtitution General to the Subjects, 'of all their Laws, Liberties, and free Cuſtoms, as freely and wholly as at any 'time before, in better and fuller manner than they uſed to have the ſame. But yet, that this was no general Scutage or Tax upon the whole Kingdom, but upon the Tenants *in Capite*, and their Tenants by Knight's Service alone, appears by the Writ it ſelf. So that not only all the Perſons I have already mentioned, who being Tenants to Monaſteries and Priories, did not hold by Knight's Service, and all Tenants in *Petyt Sergeanty*, and all Cities and Boroughs, who did not hold *in Capite* (who if they had not then Repreſentatives in the great Council, were wholly Free from this Tax,) and not only theſe, but all Tenants in Fee Soccage, whether holding of the King, or of other Meſne Lords, were wholly exempt from this Scutage. So that nothing ſeems plainer to me, than that this Aſſembly that gave the King this Tax for themſelves and their Tenants, was a Common Council only of Tenants *in Capite*, charging themſelves and their Tenants only, and not the whole Kingdom; and that done in a Caſe of great neceſſity, *ſine conſuetudine:* For if it had included all the reſt of the Kingdom, there would certainly have been ſome mention made, how all the reſt of the Kingdom (which did not hold by Knight's Service) ſhould be Taxed.

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And that this was a Council conſiſting of the Tenants *in Capite* only, may appear by a Record of the 42d. of this King; which I pray read. *Rex Bar. &c. Quia per Commune Concilium Comitum, Baronum, & aliorum Magnatum nobiſcum in Wallia nuper exiſtentium, proviſum eſt; Quod nos, & ipſi qui ſervitium nobis fecerunt, ibidem habeamus Scutagium noſtrum*, viz. *De Scuto* 40 *Sol. pro Exercitu noſtro Wall. Anno Regni* 41. *Vobis mandamus, quod de omnibus feodis Militum quæ tenentur de Nobis* in Capite, *vel de Wardis in manu noſtra exiſtentibus, (exceptis Feod. illorum qui brevia noſtra habuerunt de Scutag. ſuo habendo) levari fac. Scutag. noſtrum.* From which Writ it appears, that this was only a Common Council of Tenants *in Capite*, who had attended on the King, and done their Service in this

Inter Communia de Term. Sancti. Mich. Anno 42. H. 3. Rot. 4. de Scut. Levand.

Welsh Expedition; and concern'd none else but such Tenants by Knights Service, and their Tenants who had fail'd to do their Service; and is such a Tax as is expresly reserved by the last Clause of King *John*'s Charter, which is before cited; whereby Scutage is to be assessed by all the Tenants *in Capite*.

And that not only the Spiritual and Temporal Barons, and Tenants *in Capite* did thus meet, and hold distinct Councils or Assemblies for the granting of Scutage; but also that the Spiritual Barons, and other Ecclesiastical Tenants *in Capite*, did also sometimes hold separate Assemblies, appears by the Patent-Roll of the 15th of this King, thus: *Cum peteremus à Prelatis Angliæ quod nobis Auxilium faceren, pro magnâ necessitate nostrâ de quâ eis constabat*; viz. *Episcopis, Abbatibus, Abbatissis, Prioribus & Priorissis, qui de Nobis tenent* in Capite, *ipsi Nobis liberaliter concesserunt Auxilium tale*; viz. *De singulis Feodis Militum suorum* 40 *s. de tot Feodis, de quot ipsi tenentur nobis respondere, quando nobis faciunt Servitium Militare.* Where you see, not only the Bishops and Abbots, but the Abbesses and Prioresses granted a Scutage of 40 *s.* upon every Knight's Fee, for which they were answerable to the King. And tho' I do not suppose that these Women left their Nunneries, and appear'd in Person at such Meetings; yet they might very well do it by their *Oeconomi*, or Stewards, as their Lawful Proxies for Assemblies of that Nature. *Rot. Pat. 15. H. 3. N. 3.* a° 1231. vide M. Par. p. 314.

But when a General Tax or Aid was granted by the whole Kingdom, the Stile of these Councils runs much otherwise; as appears by the Close-Roll of the 4th of this King, where it is recited in the Record, that *Omnes Magnates & Fideles totius Regni nostri*, granted *de qualibet carucatâ duos solidos.* Now it hence appears, that this was a Grant of Caruage; which not being a Scutage-Service, nor yet a Scutage-Tax, was therefore to be granted by the Common Council of the whole Kingdom, assessed not only upon Tenants *in Capite*, and their Feudatory Tenants, but upon each Plough-Land of the whole Kingdom, must have been granted (as I have already proved out of *Bracton*, speaking of this Caruage) *de Consensu & communi Consilio totius Regni*; for otherwise these Tenants *in Capite* could never have charged all the other Lands of *England* which were not held by Military Tenure. And to make it yet plainer by other Records, pray see another of the 16th of this King, in these Words: *Rex Vicecomiti Devon. Salutem. Sciatis quod Archiepiscopi, Episcopi, Abbates, Priores, & Clerici terras habentes, quæ ad Ecclesias suas non pertinent, Comites, Barones, Milites, Liberi Homines, & Villani de Regno nostro, concesserunt nobis in auxilium, quadragesimam partem omnium Mobilium suorum.* So that it is plain here who made the *Commune Concilium Regni*, and gave this Aid of a 40th Part of their Goods; *viz.* the Archbishops, Bishops, Abbots, Priors, Inferior Landed Clergymen, the Earls, Barons, Knights, Freemen, *&c.* which was a Subsidy granted upon Goods, or Personal Estates, and not laid upon Land, and could not be granted by the Tenants *in Capite* alone. And that it may fully express all the Parties to the Grant, the Record tells us, there were also the *Villani*, the Inhabitants of the Villages or Borough-Towns. And to let you see that our Ancient Manuscript Chronicles of this Age give the same Sense to the Expressions of this Record, and that in the same Terms; pray read this Quotation, which a Friend of mine took out of an Ancient Manuscript, called *Chronica Monasterij de Hageny*, in the *Cottonian* Library, as ancient as the Times are we are now treating on. The Words are these: *Anno* 17. *Henrici Regis Quarti*: (Where note that the Year is mistaken for the 16th, but the King is the same; *Henry* the Third being often in that Age called the Fourth, in respect to King *Henry*, Son to *Henry* the Second.) *Idem Rex accepit ab Archiepiscop. Episcop. Abbatibus, Prioribus, Clericis terras habentibus, quæ ad Eccles. sua non pertinent, & ab Comitibus, Baronibus, Militibus, Liberis Hominibus, & Villanis de Regno Angliæ, in Auxilium quadragesimam partem omnium Mobilium suorum.* And to let you see that this Author makes a plain Distinction between the Tenants *in Capite*, and the rest of the Kingdom, pray observe what immediately follows in the same place; [*ut*] (*Anno ejus octavo*) *tu quo communi Assensu, & voluntate Magnatum suorum, quam aliorum* Laicorum *totius Regni, quintam decimam Catalorum suorum universaliter accepit.* Where note, by *accepit*, is still to be understood he received it, after the Peoples Grant of it, as before in the Record of the 16th; and that by *Magnatum suorum*, is meant the Great Lords and Tenants *in Capite*; and by *aliorum Laicorum*, (put here as distinct from them) all other Orders or Degrees of Men. *Rot. Claus. 4. H. 3. M. 5.* *Rot. Claus. 16. H. 3. M. 2. Dorso.* *Sub Effigie Vespasiani, B. 11. fol. 20.*

Now pray, how could these Taxes upon the Goods of the whole Kingdom have ever been given, but by the General Representatives thereof, (since all could not be there in Person) unless you can shew me, that Men in those Days held their very Goods and Chatels by Tenure *in Capite*.

M. I think you and I may so far agree, that this Council I instanced in, consisted of Tenants *in Capite* only; and likewise that they imposed Scutage upon no others than their Tenants by Knight-Service; yet doth it not therefore follow, that they were not the Common Council of the whole Kingdom, or might not have Tax'd all others, tho' they were not their immediate Tenants, as well as they did those that were: And therefore I am not convinc'd, but that these Persons mentioned in the Records you have cited, (which you grant constituted a Common Council of the Kingdom) were no other than the same Tenants *in Capite* already mentioned: For as for the *Fideles*, mentioned in the Record of the 4th of *Henry* the IIId. I think the Doctor hath very well proved, both in his Answer to Mr. P. as also in his Glossary, that they were no other than the King's Tenants *in Capite*: And for this, pray consider the Authorities he there gives us. For tho' I agree with you, that the Word *Fideles doth sometimes signify (generally) all those who are under the Power or Subjection of their Prince*; yet *Hotoman* also tells us, That, *Fideles interdum specialiter dicuntur iidem qui Vassali: Qui Feudo accepto in Patroni Fide, & Clientela sunt, viciſſimque suam ei certi obsequij nomine Fidem astrinxerunt.* And in this Sense, I suppose, this Word is to be taken in most of our Histories and Records. I shall therefore give you one, which will sufficiently clear the true Signification not only of the Word *Fideles*, but of *Liberi Homines* too. It is in *William Malmsbury*, in these Words: *Willielmo Filio suo, cum vix 12. Annorum esset, omnes Liberi Homines, &c. cujuscunque Ordinis & Dignitatis, cujuscunque Domini Fideles, Manibus & Sacramento se dedere coacti sunt.* By which you may see, that by the Words *Liberi Homines & Fideles*, are here meant only the Feudal, or Military Tenants, either of the King, or of any other Lord. And to prove it farther by Records, pray see here those that the Doctor hath given us in the same place. The first is that of the Patent-Rolls of the 15th of King *John*: *Rex Baronibus, Militibus, & omnibus Fidelibus totius Angliæ, Salutem.* They were to hear what the Bishop of *Winchester* was to say to them about the Releasing the Interdict; and that these *Milites* and *Fideles* were only the King's Tenants *in Capite*, is clear from the latter Part of this Record: *Unicuique vestrum, si fieri potest, Literas nostras super hoc transmissemus, sed Negotium majori Festinatione, &c. Teste Meipso apud Rupel, &c.*

B. G. p. 45. *Hotoman in verbis Feud. Col. 924. D.*

Speaking of Prince *William* Son to *Henry* the Ist. *f.* 50. *A. N.* 30.

Pat. 15. *Johan. P.* 2. *M.* 2. *N.* 9.

B. G. 45. *B. A. P. p.* 67, 68.

The King had writ to them all particularly, but that the Business required greater Haste. It seems, before the Granting of *Magna Charta*, this King sent special Summons, and particular Letters to his Barons, and other Tenants *in Capite*, to meet upon any Occasion. So likewise in these Writs there mentioned to the Tenants *in Capite* of several Counties, as they are found in the Close-Roll there cited: *Rex omnibus Comitibus, Baronibus, Militibus, & aliis fidelibus suis de Com. Ebor. Northumbr. Cumbr. &c. Vobis mandamus quod Prompti sitis, & Parati cum Equis & Armis, &c.* These were the Feudataries and Tenants in Military Service.

B. G. p. 45. *Cl.* 42. *H.* 3. *M.* 10. *dor.o.*

But to speak somewhat of the *Clerici Terras habentes, &c.* as also of the *Liberi Homines & Villani*, mentioned in the Records of 16. *Henry* III. you have now cited: 1. I cannot allow your Version of those Words *Clerici Terras habentes, quæ ad Ecclesias suas non pertinent*, by inferior Landed Clergy-men, since 'tis more than you can make out; for I take them to be such Clerks, as had Mannors and Military Fees not belonging to their Benefices, and that were held of the King *in Capite*, the Fee whereof was in the Crown, and not in the Church, and therefore did not belong to it.

B. A. P. p. 220, 221.

But *Mat. Paris, fol.* 377, informs us better who they were that gave this Tax, when he speaks concerning this very Council you mention: - - - *Ad Colloquium coram Rege convenerunt Episcopi, & aliarum Ecclesiarum Prælati, cum Proceribus Regni, concessa est Regi quadragesima pars bonorum.*

Now what the *Liberi Homines* were in this Record you have cited, we may easily guess from the other Records I have made use of, in the 16th of *Henry* III. *viz.* such of those, *Omnes alij qui de Nobis tenent in Capite*; which were not *Milites* in a strict Sense, as not having received the Order of Knighthood. And I shall

I ſhall make out this Senſe of the Words, as alſo of the true Meaning of theſe *Villani*, by another Record, dated but Two Years after this of yours, *viz.* 21 *Hen.* III. *Rex Vic. Cant. Salut. Scias, cum octavis Sancti Hillarii*, &c. *ad mandatum noſtrum convenirent apud Weſtm. Archiepiſcopi, Epiſcopi, Abbates, Priores, Comites & Barones totius Regni noſtri ut tractatum haberent nobiſcum de ſtatu noſtro, & Regni noſtri, iidem Archiepiſcopi, Epiſcopi, Abbates, Priores & Clerici Terras habentes, quæ ad Eccleſias non pertinent, Comites, Barones, Milites & Liberi Homines pro ſe & ſuis Villanis nobis conceſſerunt in Auxilium Triceſſimam partem bonorum.* *Rot. Pat. m. 7. dorſ.*

From this Record we may obſerve, 1. That the King's Writ was only iſſued to the Archbiſhops, Biſhops, *&c.* Earls, Barons of the whole Kingdom. 2. That in the Recital of this Tax, the Sheriff is told, firſt, That the Archbiſhops, Biſhops, *&c.* and the Clergy which had Land not belonging to their Churches (a certain Sign that they granted by themſelves, and out of nothing elſe but that) and then that the Earls, Barons, Knights and Freemen for themſelves and their Villains granted a Thirtieth Part of their Moveables. *B. A. J. Pag.* 221.

And from this Record it is alſo manifeſt, theſe *Liberi Homines* had *Villanos* (if not Bondmen) Villagers or Ruſticks, *Colonos*, or Husbandmen at leaſt; of whoſe Eſtates by publick Aſſent, and for the publick Benefit, they might in part diſpoſe; which *Liberi Homines*, according to the Tenor of all our Records and Hiſtories, were Tenants *in Capite*; and that the *Villani* mentioned in the other Record of 16 *Hen.* III. to have given a Fortieth Part of their Moveables, did grant by their Lords; that is, their Lords Paramount, that were Tenants *in Capite*, did grant for them, tho' they held it not immediately of them, but of other Tenants in Military Service, which immediately held of the Tenants *in Capite* who did charge them by publick Taxes, hath been ſhewn from divers Records: So that it was frequent in thoſe Times to ſay, Such, and ſuch, *conceſſerunt*, granted ſuch a Tax, that is, by thoſe who had Power and Authority to do it for them; and without their Conſent too, when thoſe for whom they granted were not capable of being Members of Parliament themſelves. I could give you more Examples of the like Nature, but I will not tire you.

F. I pray, Sir, give me leave to anſwer this long Speech, and to begin with your Interpretation of this Word *Fideles*. Firſt then, we are ſo far agreed, that the Word *Fideles* had two or three different Significations. Firſt, it ſignified all the Subjects in general; in the next place, all Vaſſals, or Feudatory Tenants whatever, whether of the King, or any other Lord, as appears by the Paſſage you have cited out of *William* of *Malmsbury*, as alſo divers ancient Charters, particularly thoſe of King *William* I. and *Maud* the Empreſs, and King *Stephen*, which are divers of them directed, *Fidelibus ſuis, Francis & Anglis*, which cannot mean Tenants *in Capite*, ſince the Doctor and your ſelf will ſcarce allow any *Engliſhmen* to have then held Lands *in Capite* of the Crown. Laſtly I grant this Word *Fideles* may ſometimes ſignify the Tenants *in Capite* of the King; all which being ſo, I think you cannot deny, that it is not the bare Word, but the Senſe it bears in the Place where it is uſed, that muſt direct us to its true Signification; and that the *Fideles* there mentioned to have granted Caruage in the 4th of *Hen.* III. could not be the King's Tenants *in Capite* only, I have given you a ſufficient Reaſon which you do not think fit to anſwer, *viz.* That Caruage was a general Tax impoſed upon all the Lands of the Kingdom, as well what was held by Knight's Service, as what was not; and how your Tenants *in Capite* could Tax thoſe Lands which were never held by Knight's Service, I deſire you would reſolve me. And therefore by the *Fideles* here mentioned in this and many other Records, are not to be underſtood the Tenants *in Capite* only, but all other Subjects who owed Fealty; who, though they could not all appear in Perſon in our great Councils or Parliaments, yet were there by their Repreſentatives the great Freeholders, Lords of Mannors, or elſe by the Knights, Citizens and Burgeſſes.

But I muſt now make ſome Remarks upon your Interpretation of the Writs of the 16th and 21ſt of *Hen.* III. wherein you have certainly very much miſtaken the Senſe of all the main Words. For in the firſt Place, as for the

Clerici terras habentes non ad Eccleſias pertinentes, which you interpret to have been *Clerks having Mannors and Military Fees not belonging to their Benefices, but held of the King* in Capite, *ſeems to be altogether forced.* For whoever heard of Clerks (that is, inferior Clergymen) Parſons, or Vicars of Churches, who held Benefices of the King *in Capite*, and not in *Franc Almoigne*? Or if they had any ſuch, that therefore thoſe Lands ſo held ſhould be called Lands not belonging to their Churches; for at this Rate the Lands of Biſhops, all Abbots, Priors, *&c.* which held of the King *in Capite*, would have been in your Senſe, Lands not belonging to the Church; but who but you and your Doctor ever gave ſuch an unreaſonable Comment on thoſe Words?

Nor will that Paſſage you cite out of *Mat. Paris*, at all favour your Interpretation; for either theſe Biſhops and Prelates there mentioned, gave this fortieth Part of their Moveables in Parliament, with the reſt of the Kingdom, or elſe as Clergymen in Convocation: If the former, then theſe *Clerici* could have no Votes there in Perſon; for I believe it would puzzle you to prove, that at this Time any Eccleſiaſtical Perſon, below the Degree of an Abbot or Prior, had any Place in Parliament, by reaſon of his Tenure by Knight's Service *in Capite*, for thoſe Lands he held in Right of his Church; but if you'll have this Tax to be granted by the whole Clergy in Convocation, then ſuch Clerks as you mention could not be there in Perſon: Firſt, becauſe they are ſaid to be ſuch as had Lands, *quæ ad Eccleſias ſuas non pertinent*, and ſo could not have any Place there as Clergymen; nor could they be included under the *Prælati*, ſince that Word takes in none beneath the Degree of a Dean. And therefore if theſe Clerks gave any Thing in Parliament, they muſt do it by their lawful Repreſentatives in Convocation, the Clerks of the Lower Houſe, then called *Procuratores Cleri*: So that take it which way you will, thoſe Clerks could not be preſent themſelves at theſe Parliaments, when thoſe Taxes of the 30th and 40th Part of their Moveables were given to the King; and therefore either as Laymen or Clergymen, muſt be Taxed by their Repreſentatives: But indeed the Words *Proceres Regni*, which immediately come after *Epiſcopi & Prælati* in *Matt. Paris*, ſufficiently ſhews this Grant was made in Parliament. That the Word *Proceres* often includes, not only the Knights of Shires, but Citizens and Burgeſſes too, I have already proved, when I ſpoke of the various Significations of that Word. Nor is your Interpretation of *Liberi Homines*, for Tenants *in Capite*, who Taxed their *Villani*, any other than a meer wreſting of theſe Words; for if they were only thoſe who gave for themſelves and their *Villains*, whom you ſuppoſe were either their Bondmen, or elſe their Ruſticks or Husbandmen, it is abſolutely contrary both to Law and Reaſon; for who ever heard that Villains or Bondmen, who had no Property either in Lands or Goods, ever paid Taxes? And if you ſuppoſe that theſe *Villani* were only the Ruſtick Tenants in Soccage by Villain Service of the Tenants *in Capite*, then it is plain that all the Military or Feudatory Tenants of the Tenants *in Capite*, and all Tenants in Free Soccage by certain Rent, were exempt from both theſe Taxes, ſince they are not ſo much as once mentioned in theſe Writs, neither can be comprehended under theſe *Villani*, as your ſelf muſt acknowledge: For if theſe *Villani* were meer Ruſticks, pray tell me what Reaſon there was to put them Cheek by Jole with their Lords, as they are in the Record of the 16th of *Hen.* III. as if they had given by themſelves, as well as the reſt of the Freemen of the Kingdom? Or what Reaſon is there why the Lords (as the Words are in your Record) gave *pro ſe ſuis Villanis*, if the *Liberi Homines* there mentioned, had not repreſented them? Which could never have been ſaid with any Senſe, had they been only ſo many Maſters over their Villains: Whereas it here appears, every one of theſe Orders or Degrees of Men here mentioned, had an equal independent Power to give for themſelves, and not one for another. Or elſe this Word may be meant in a larger Senſe, as in the Record of the 16th of *Hen.* III. where they are put in the Nominative Caſe (as equal to the reſt of the Orders of Men there recited) and ſo could not be Husbandmen, or meer Villagers, but the Inhabitants of Cities and Boroughs. And which Senſe Sir *Henry Spelman* allows in his Gloſſary; *Villanus eſt qui in Villa habitat, ut Urbanus ab Urbe, &c. Villa autem propria notat Viculum Ruſticanum, ſed ex more Gallici idiomatis traducitur*

ad insignia oppida, & ad ipsas Urbes; but take it in what Sense you please, it is plain it could never here mean meer Villagers; nor could all your *Liberi Homines* be only Tenants *in Capite*; for then the Record would have concluded thus, *& Liberi Homines, qui de nobis tenent in Capite*, as it is in the Records you have cited of the 10th of *Hen.* III. to the Sheriff of *Sussex*, and may be found in many other Records, which respect only Tenants *in Capite*. And for further Proof of this Sense of the Word *Villanus*, we need go no farther than these very Records themselves, of the 16th and 21st of *Hen.* III. which you and I have now made use of; in both which Writs there are certain Persons appointed to assess and collect the Aids in every County, and who, by virtue of these Writs, did cause to be elected Four of the best and most lawful Men, *de singulis Villis* of each Hundred in the Counties there mentioned; and then the *Villani* will signify in these Writs, not Villains or meer Rusticks who were not then reckoned *inter Legales homines*. And though 'tis true you have brought some Presidents to prove, that the Tenants *in Capite* gave Taxes for their feudatory Tenants; yet that was only where the Tax was raised upon Knight's Fees alone, and not upon all the Lands of the Kingdom in general, much less upon Goods and Chattels. So that either the *Liberi Homines* mentioned in these Records, must mean all the Freemen of *England*, who by their Representatives gave these Taxes of a 40th or 30th Part for themselves, and all such of their Tenants, who held Estates of Copyhold Leases, for Years, or at Will, or had Estates in Stock, Money, or other Chattels; for otherwise the Taxes could never have been general, nor charged upon moveable Goods of the whole Kingdom.

I have but one thing more to remark upon your Observations of this Writ, which is, that whereas you take notice that the King's Summons was directed to none of the Laity, but the Earls and Barons of the Kingdom; and if so, I desire you to prove to me, that your less Tenants *in Capite* were at all present at those Parliaments; for you have already granted that they were no Barons, and consequently could not be included under that Title; so that if these *Liberi Homines* who granted this Tax for themselves and their Tenants, were not only Tenants *in Capite*, but their Under-Tenants also by Military Service; (as the Doctor himself grants in his Answer to *Argumentum Antinormannicum*,) *p.* 25. as also in his Glossary, *p.* 51. then it will follow by his own Concession, that others besides Tenants *in Capite* were under the Title of *Liberi Homines* were Parties to the granting this Tax in Parliament; which is that I contend for. So that unless you can prove that your *Liberi Homines* were all Tenants *in Capite*, you will never make out that none but they had a Right under that Title to appear at our great Councils or Parliaments; and to grant Aids, and joyn in the making of Laws for themselves, and the rest of the Nation, before the Times you allow. To conclude, unless you can also prove that there was a Tenure *in Capite* of Goods and Chattels, as well as of Lands, it will appear by these Aids granted in Parliament of Personal Estates, that all Freemen or Freeholders were alike Free, and consequently had the same Right to appear in Parliament, either by themselves, or their Representatives.

M. But pray make out if you can, by some more evident Proofs, that any other besides Tenants *in Capite*, were admitted into our great Councils; and that these *Liberi Homines* were not Tenants *in Capite*.

F. I think I need go no further than the first Words of the Agreement between King *John* and the Barons, which is still extant on the Close Rolls of the 17th of this King, (*m.* 2. *dorso*,) beginning thus, *Hæc est conventio inter Dominum Johannem Regem Angliæ ex una parte, & Robertum Filii Walteri, Marescalli exercitus Dei, & sanctæ Ecclesiæ Angliæ, & Rich. Comitem de Clare, &c.* and here follow the Names of divers of the rest of the Earls and Barons, *& alios Comites & Barones, & Liberos Homines totius Angliæ*; so that it is clear this Charter was granted in a great Council of the whole Nation, in which were assembled, not only the Bishops, Earls and Barons, with all your less Tenants *in Capite*, but also all the Clergy, as well the Inferior as Superior, and all the Freemen or considerable Freeholders of the whole Kingdom by whatsoever Tenure; or, as Mr. *Selden* words it in his Titles of Honour, *Fol.* 586, 587. it was made by the King and his Barons, and all the Freemen of the Kingdom;

dom; which Aſſembly *Matt. Paris* expreſſes more ſuccinctly by theſe Words, *tota Nobilitas Angliæ in unum collecta, quaſi ſub numero non cadebat*; ſo that nothing can be plainer, than that many other, beſides your Tenants *in Capite*, appeared at this great Council.

M. In the firſt Place, before I anſwer the main of your Argument, give me leave to tell you, That I cannot allow this Aſſembly at *Running Mead* to have been truly a Great Council of the Nation, but rather a Rebellious Armed Rout met together without the King's Writs of Summons, and indeed, whether he would or not; and I ſuppoſe you will not aſſert that any Repreſentatives had Votes therein; nor can you ſhew me that any Knights, Citizens, or Burgeſſes were ſummoned to it.

F. I grant indeed that that Aſſembly was not properly a Parliament, I mean ſuch as we have at this Day, as not being called by the King's Writs; yet ſince almoſt all the Biſhops, Earls, Barons, Tenants *in Capite*, and all the reſt of the Kingdom were then in Arms; it may very well be reckon'd a Common Council or Solemn Convention of all the Freemen of the whole Nation, and that after the moſt ancient Manner; ſince all, or the greateſt part of the Freeholders of the Kingdom were there preſent in Parliament. And that this Council is look'd upon as a Parliament in the Eye of the Law, appears by a Writ to the Sheriff of *Northamptonſhire*, which is found in the Cloſe Rolls in the 28th of *Henry* III. to this Effect, *That he ſhould not permit any one in his Bailiwick to uſe any Liberties belonging to the Crown, unleſs they had formerly been uſed*, ad Tempus Parliamenti de *Rune Mead*; quod fuit inter Dominum Johannem Regem Patrem noſtrum, & Barones ſuos Angliæ.

Cl. 28. H. 3. M. 12. dorſo.

M. I ſee that you are forced to confeſs, that this Aſſembly was no Parliament in the Senſe we now take that Word, nor indeed could be any more than a Rebellious Rout there met, whether the King would or no: And therefore the Word Parliament is not to be underſtood in this Record in the Senſe we now take it, ſince that Word came not in Uſe here (inſtead of *Magnum Concilium*, & *Commune Concilium & Colloquium*, a Conference) until about the Middle of *Henry* IIId's Reign; and doth no more point out the Conſtituent Members of it, than that Word did at that Time. And ſo the meaning of the Word *Parliamentum* is to be taken in this Record.

B. A. P. p. 71.

F. I think I have a very good Reaſon, notwithſtanding what you have now ſaid, to affirm, That this was a great Council of Parliament according to the Mode of thoſe Times: And tho' I grant it was not called by the King's Writs, ſince it is certain he avoided calling any, becauſe he utterly refuſed to grant this Charter at all; yet that is not material; ſince they being a general and full Aſſembly, or Convention of all the Eſtates of the whole Nation, had a juſt Right to meet, and vindicate their Liberties then outragiouſly oppreſt, and trodden under Foot by the King. And the King himſelf owned them as a lawful Aſſembly, by ſending to them, and appointing them to meet in *Rune Mead*, between *Staines* and *Windſor*, on the 15th of *June*, which our Hiſtorians tell us they joyfully obeyed; ſo that he himſelf admitted them to be a Lawful Aſſembly of Eſtates, and conſequently for his Parliament, as appears by the Agreement now cited.

Vid. Matt. Paris.

B. A. G. p. 159.

M. I ſhall not much trouble my ſelf, whether this was properly the great Council or not. But however, I cannot ſee how Mr. *Selden* could make out, that this Charter was made by, or to all the Freemen of *England*: for it ſeems to me that there was not the leaſt ground for it. For if under the Words *Liberi Homines*, all the Freemen, or Free-Tenants of what Condition ſoever, were comprehended; yet here is nothing in this Record that any way proves that they had any Hand in making this Charter; but the true *Liberi Homines* here were only thoſe whom the King calls *Liberi Homines Noſtri* in his Charter, and immediately grants them ſeveral Relaxations of their rigid Feudal Tenures; by which 'tis apparent, theſe *Liberi Homines*, were the Tenants *in Capite*, and yet neither was the Charter made by them, as is before intimated: Tho' I confeſs theſe were the Freemen which made ſuch a Cry for their Liberties (moſt of which were but an Abatement of the Rigor, and a Relaxation of the Feudal Tenures, as appears by the Charter it ſelf) the reſt were only Followers, and helped to augment the Noiſe; they were no Law-makers as you imagine; For

B. G. pag. 51.

'tis

'tis not probable, that those Men that had the Force of the Nation in their Hands, would permit Men of so small Reputation to share with them in Law-making. Those that had the Power of this and other Nations *de Facto*, always did give Laws and Tax the People.

F. Supposing this, (as I have already proved it,) to be a Lawful Common Council, or Parliament of the whole Kingdom, I think I may still affirm that this Charter was made, not only by the King, but by the Bishops, Earls, Barons, and all the Freemen of the Kingdom, who certainly gave their Assent to it, by drawing it up into Form, and by accepting it from the King when pass'd under his Seal, as truly as the *Magna Charta*'s of King *Henry* III. and *Edw.* I. are called Statutes, for the same Reason as I have already proved to you; or as much as the Petition of Right granted by King *Charles* I. was a Statute, tho' past under no other Form.

Nor were the *Liberi Homines totius Regni*, to whom King *John* granted this Charter, no other than the Tenants *in Capite*, as you suppose, since in the Time of *Henry* II. this King's Father, the Word *Liber Homo* was taken in a much larger Sense, as appears by the Assize of Arms ordained by this King (as it is recited in *Hovenden*'s History) where after it is appointed, what Corselets, Helmets, and other Arms every Tenant *in Capite* should find; it immediately follows thus: *Quicunque liber Laicus habuerit in Catallo vel in redditu ad Valentiam* 16 *Marcarum habeat Loricam, & Cassidem, & Clypeum & Lanceam*; *Quicunque Liber Laicus habuerit in Catallo ad Valentiam* 10 *Marcarum habeat Harbergellum, & Capelet Ferri, & Lanceam: Et omnes Burgenses, & tota Communia liberorum hominum habeant Wambais, & Capelet ferri & Lanceam*: Where you may observe, that every Freeman who was worth in Rent or Goods to the Value of 16 Marks, was to find as much Arms for the Defence of the Kingdom, as he that possessed a whole Knight's Fee; and the meanest Townsman, and the whole Commonalty of Freemen (for so I translate the Words, *Communia Liberorum hominum*) were to find a Caplet or Head-piece of Iron, besides other Weapons. And the 2d Article of King *John*'s Charter says expressly, *Concessimus etiam & omnibus Liberis Hominibus Nostris Regni Angliæ, pro Nobis & Hæredibus Nostris in perpetuum omnes Libertates subscriptas, habendas & tenendas eis, & hæredibus suis de Nobis & Hæredibus Nostris*: Which the Doctor himself renders thus: We have also granted *to all our Freemen of the Kingdom of* England, *&c.* And sure then this Charter could not be made to none but Tenants *in Capite*, unless you will suppose that none but they were Freemen, and all the rest Slaves.

Nor was this Charter only made to relax the Severity of the Feudal Tenures, as you suppose; since there are divers other Clauses in it which concern all the rest of the Freemen, and Freeholders in *England*, as well as they. For besides the First and Second Chapters of this Charter, which grants and confirms to the Church of *England*, and to all the Freemen of the Nation, their Rights and Liberties; if you please better to consider it, you will find that there are several other Chapters in this Charter, by which all other Freemen, as well as the Tenants *in Capite*, have an Interest in the Liberties there granted, as you may see by the 10, 11, 12, 13, 15, 16, 22, 23, 24, 25. and above 30 other Chapters or Clauses therein express'd, which are granted, not to Tenants *in Capite* alone; but either to Ecclesiasticks, or other Lay Freemen of the whole Kingdom. But to prove this a little further, I shall give you but one or two Instances out of this *Magna Charta*; and that too in the Doctor's own Translation: *Article* 48. 'No Freeman shall be taken, or imprisoned, 'or disseised of his Free Tenement, or Liberties, or Free Customs, or Out-'Lawed, or Banished, or any ways Destroy'd, nor will we pass upon him, or 'commit him to Prison, unless by the Legal Judgment of his Peers, or by the 'Law of the Land (*i. e.* by Legal Process.) The other is the 49th Article of 'this Charter, That we will not sell to any Man, we will not deny any Man, 'or delay Right or Justice; Now judge your self, whether these two Articles were made to the Tenants *in Capite* alone, or to all Freemen of the whole Kingdom.

And hence it also plainly appears, that the same Body of Freemen to whom this Charter was made, were likewise present, and gave their Assents to the

making of it: Nor were *Vavaſors*, or Feudatory Tenants of the Biſhops, Abbots, Great Lords, and other Tenants *in Capite*, Perſons ſo inconſiderable as you would make them, that they only ſhould come hither but as Followers, to augment the Noiſe; ſince I have already proved from *Bracton*, that there were divers of them Men of great Eſtates and Power in their Countries; beſides the Tenants of thoſe Abbots and Priors, who (as I have already mentioned) did not hold *in Capite* of the King at all, and yet made a great Part of the Kingdom; beſides Tenants in *Petyt Serjeanty*, and thoſe that held of great Honours, or Manors, who could never be repreſented by the Tenants *in Capite* at all. And therefore I muſt (notwithſtanding what you affirm to the contrary) look upon all theſe Perſons for as good Law-makers, as the greateſt Lords or Tenants *in Capite* of them all; ſince the main Force of the Nation did not lye in them, but in their Feudatory Tenants, who would never have followed their Lords in this Aſſembly, if they had not look'd upon themſelves as having as good an Intereſt in the Rights and Liberties they demanded, (as appears by the like *Salvo* of all their Liberties) as their Lords themſelves; and alſo as good a Right as they, in giving their Aſſent to them, when they were to be paſs'd into a Law, as they were by this Charter; ſince theſe Feudatory Tenants were not at all obliged by their Tenure to obey their Lords Summons at any other Warlike Expeditions, but where the King, or his Lieutenants, went out in Perſon.

M. I am very well ſatisfied that this could be no Parliament, for the Reaſons already given: And tho' I grant that theſe Charters were made to, and in the Preſence of the greateſt Part of the Clergy, Earls, Barons, and Freemen of the Kingdom; yet this proves not that they had any Vote, or Suffrage, in making of them; nor indeed could they; for the Great Charters were only the Petitions of the People, drawn into the Form of a Charter, and paſſed under the King's Seal, as his mere voluntary Free Grants and Conceſſions, without any Votes or Authority from the People. And therefore the Great Charters of *Henry* III. recites them to have been made of his mere *Grace and Free Will*; as it is in the Preface to it. But pray anſwer me a few plain Queſtions, concerning King *John*'s Charter; which if you can reſolve, I may be inclined to believe there might be ſome other Great Council, beſides that of Tenants *in Capite*. The firſt is, If this Common Council of Tenants *in Capite*, were for Aſſeſſing of Aids and Eſcuage only, (as you ſuppoſe it is provided by the laſt Clauſe of this Charter) why was the Cauſe of the Meeting to be declared in every Writ of Summons, to the Great Barons, and Tenants *in Capite*? If they were only ſummoned about Aids and Eſcuage, or other ordinary Buſineſs of Courſe; ſure then the Cauſe of Summons need not to have been declared as it is here provided; *in omnibus Literis Submonitionis, cauſam Submonitionis illius exponemus.*

B. A. I. Page 167.

B. A. P. Pag. 170.

F. I will give you an Anſwer to this Queſtion immediately; but before I do it, let me tell you that you are much miſtaken, in ſaying, that the Great Charters (becauſe they were the King's Free Conceſſions) were therefore paſſed without any Votes, Suffrages, or Authority of the People of *England*; ſince I have already proved, in our Diſcourſe concerning the *Legiſlative* Power, that the Matter of thoſe Charters was no more than an Affirmative of the Common Law of *England*, long before your Conqueſt; and that the Peoples Conſent and Suffrage was ſufficiently given, in their drawing them up, and offering them to the King to be ſealed, and accepting them from him when he had done it: And therefore the Great Charters are always called Statutes, in our Ancient Records, and Acts of Parliament. But to anſwer your Queſtion; I ſuppoſe that the King, beſides the ordinary Buſineſs of their Aſſeſſing Eſcuage, had often other Affairs of Moment to be tranſacted with, and communicated to his Biſhops, Great Lords, and Tenants *in Capite*, in which the reſt of the Kingdom were not at all concern'd; ſuch as giving the King their Advice, as a Great Council, concerning divers weighty Affairs, (as in the Buſineſs of *Sicily*, mentioned in the firſt Record I have cited) as alſo about undertaking Foreign Wars againſt *France*, *Scotland*, *Wales*, &c. in which they were bound to follow, and aſſiſt him, together with their Under-Tenants, according to their reſpective Tenures; and therefore it was but Reaſon that they ſhould have timely Notice, that they might give their Advice in it; as alſo that they might either come, or ſtay away, according to the Greatneſs or Urgency of the Occaſion; and might alſo give their Under-Tenants

Notice, to provide themſelves with Horſes and Arms, and all Things neceſſary, in caſe a War ſhould be agreed on: Which, I think, are ſufficient Reaſons for thus expreſſing the Cauſes of their Meeting in the Writs of Summons.

M. Admit this were ſo, (which I ſhall yet take further Time to conſider of) pray tell me, in the next place, if all your Inferior Barons, *Vavaſors*, or Lords of Manors, *&c.* ſuppoſing them either to have appeared in Perſon, or elſe as choſen for Knights of Shires, who were the Members of the Great Council of the Nation; I pray tell me, why there ſhould not have been the ſame Care taken, that they might be alſo ſummoned as well as the Tenants *in Capite*? Certainly they came not to them by Inſtinct; nor is it ſcarce probable that they would leave their Country-Buſineſs, to travel from one remote Part of *England* to another, to theſe Great Councils, (which ſeldom continued above three or four Days) if they had not had a Right ſo to do.

F. I ſhall anſwer you in few Words; becauſe it was not at all neceſſary to expreſs that Clauſe you mention for them all; ſince it was ſufficient therein to follow the old Courſe of Summoning the Common Council of the Kingdom; for doing which, it had always been the Cuſtom to give ſufficient Notice by Writs of Summons of their Meetings: Whereas in this Council of Tenants *in Capite*, ſince there was by this Charter ſome Alteration in the Manner of their Summoning, ſo there was alſo for expreſſing the Cauſe of their Meeting: For whereas before that (as the Doctor himſelf allows) all the Leſſer Tenants *in Capite* had particular Letters, or Writs of Summons, expreſſing the Cauſe of their Meeting; they were for the future to be ſummoned by General Writs directed to the Sheriffs; and therefore it was but Reaſon, that there ſhould be a particular Clauſe reſerved for their General Summoning, which there was no need of in thoſe Writs that were iſſued for the Summoning the reſt of the People, or Commons, to the Great Council, or Parliament; as I doubt not but it would appear, in caſe we had thoſe Writs to produce: In which likewiſe there was anciently often expreſs'd the particular Cauſe of their Meeting; as there was, for inſtance, in thoſe famous Writs to the Lords and Commons of the 49th of *Henry* III. which the Dr. hath given us in his Anſwer to Mr. P. *B. A. P. p. 68.* *B. A. P.* 137.

M. But I have ſtill a greater Objection behind than either of the former. You cannot deny, but that by the firſt Clauſe of King *John*'s Charter, (which I have made uſe of) all Aids, and Eſcuages, were to be impoſed by the Common Council of the Kingdom: And *Littleton* himſelf tells us, in the Second Book of his Tenures, *That Eſcuage is always to be aſſeſſed by Parliament, upon thoſe that failed to do their Services, after the Expedition was ended.*

Now if this had not been a Right Inherent to the Great, or Common Council of the Kingdom, but that the Tenants *in Capite* alone aſſeſſed it in King *John*'s Time; how came they to loſe that Privilege, and the Great Council of the Kingdom (or Parliament) to get it, if the former had not been the Only Great Council at the firſt?

F. I hope to give you as ſatisfactory an Anſwer to this, as I have to the reſt of your Demands. This Alteration might have fallen out two ways; either according to *Cambden*'s old Manuſcript Author, cited in his Introduction to his *Britannia*; the Sum of which is, That when King *Henry* III. after his great Wars with *Sim. Montford*, and the Barons, had ruined many of them; he, out of ſo great a Multitude, (which was before ſeditious and turbulent) called the beſt and chiefeſt of them only by Writ to Parliament; who, after that Time, became Barons by Writ, and not by Tenure, as they were before. And as for the Leſſer Sort of them, called *Baronès Minores*, they might be wholly reſolv'd into the Body of the Commons, or ordinary Sort of Freeholders: And the King being fearful of any farther Increaſe of Power in theſe Barons and Tenants *in Capite*, might no more deſire their Company at the uſual Feaſts of the Year, whither before they uſed to come *ex more*; and ſo their Power fell of courſe to the Council, or Parliament, of which before they only made a Part. *Pag.* 122.

Or elſe it might happen from the Negligence of the Tenants *in Capite* themſelves; who growing weary of their Attendance, might neglect to come to thoſe Common Councils held of courſe, becauſe of the great Trouble and Charge of thoſe Journeys; and the King being as willing to diſpenſe with their Preſence, this Court was loſt by Non-uſage; and ſo the Judicial Part of it remained in

the Houſe of Peers, and that of aſſeſſing Eſcuage, and adviſing and giving Aids in matters of War, fell wholly to the Great Council of the Kingdom; of which theſe Tenants *in Capite*, by their being capable of being Elected Knights of Shires, ſoon became the Principal Members.

But that I may have my turn to ask Queſtions; Pray tell me, if your Common Council of *Tenants in Capite*, were the ſole Council of the Kingdom, or Parliament as it is now called, why are there no other Rights or Privileges reſerved to this Council, but this of aſſeſſing Eſcuage? Were not the Powers of granting other Taxes (which could not be included under the Word Eſcuage,) and alſo of giving their Aſſent to Laws, things of as great (nay greater) moment than this of aſſeſſing Eſcuage?

M. I ſhall give you as ſhort and ſatisfactory an Anſwer as I can to your Queries. There was no need of inſerting any Clauſe to this Charter, of reſerving or conferring any Power to this Common Council of granting Taxes, and giving their Aſſent to Laws, becauſe they were things which at that Time they had no reaſon to complain of; ſince we do not read that King *John* (as Arbitrary as he was) ever took upon him to make any new Laws without their Conſents; and beſides, it was implicitly reſerved to them by the laſt Clauſe of this Charter, *viz. Saving to the Archbiſhops, Biſhops*, &c. *Earls, Barons, Knights, and all others*, &c. *the Liberties and Free Cuſtoms which they had before.* So that there was no need of any other Clauſe than this, becauſe it had been not only the Cuſtom but the Law of the Kingdom, for the King to lay Taxes and aſſeſs Eſcuage upon the Nation, without the Conſent or Aſſiſtance of this great Council; which grew now ſo great a Grievance, that they would not be contented, until the King by this Charter had renounced it.

F. I ſhall not now trouble my ſelf or you, to confute this miſtake of yours, That the Kings of *England* could legally raiſe Taxes upon all their Subjects without Conſent of their great Council, or that they ever exerciſed ſuch a Prerogative, unleſs it were in the violent Reigns of the Two *Williams*; and then if it was ever done, it was only upon their *Engliſh*, and not their *Norman* Subjects; the latter being exempt from it by the very *Magna Charta* of King *William* I. by your own Confeſſion. Nor would they, I believe, have born it at his Hands; but I ſhall ſpeak more particularly of this another Time. Only pray give me leave to ask you this one Queſtion? If this Charter of King *John* had been intended as a conſtant ſtanding Rule or Form, not only for this, but all ſucceeding Common Councils or Parliaments; what could be the reaſon that this Clauſe you ſo much inſiſt upon, of Summoning all Biſhops, Abbots, Earls, Barons, and all the reſt of the Tenants *in Capite*, ſhould be omitted in the great Charter of *Henry* III. granted in the 2d Year of his Reign; and but Three Years after the 17th of King *John* (when theſe Charters were firſt granted) as alſo when it was again confirmed in the 9th of *Henry* III.? For can any one of Senſe imagine that ſo material a Clauſe as this, and ſo expreſs for the Rights and Privileges of the whole Body of Tenants *in Capite*, as the ſole Repreſentatives of the whole Nation, could have been omitted, had they alone in thoſe Times conſtituted the Common Great Council of the whole Kingdom? How then comes it to paſs, that in all the Records of *Henry* IIId's Reign, wherein this Charter is mentioned, it is always recited *Magna Charta Noſtra*, viz. his own Charter, without taking notice of his Father's? I ſhould be glad to receive a ſatisfactory Anſwer to this Queſtion from your ſelf or any other intelligent Perſon.

M. I hope I may give you a ſatisfactory Anſwer to this Scruple, which I think may be thus ſatisfied. I conceive that the firſt Great Charter we have, which is commonly attributed to *Henry* III. and ſtiled his Charter in our Statute-Books, was properly the Charter of *Edward* I. or perhaps, rather his Explication or Enlargement of thoſe Charters of King *John* and *Henry* III. For we find not the Great Charter, either of that or King *John*'s, in any of the Rolls, until the 25th of *Edward* I. and he had a greater Sum of Money for confirming this Charter, than *Henry* III. had. Now in this Charter then confirmed, there is no Proviſion made for any Summons to Great Councils or Parliaments; and the Reaſon may well be, becauſe the Conſtitution of Great Councils or Parliaments was lately changed from what it was in the beginning of

of King *John*'s Time, and till the 49th of *Henry* III.; nor perhaps was it ſo fixed, and peremptorily reſolved on at this Time, what it ſhould exactly be for the future, as to have it made an Article of the Charter. And to this Conjecture the frequent Variations of Summons to Parliaments in thoſe Times, do give a probable Confirmation.

F. I am not at all ſatisfied with this Suppoſition of yours. For I doubt not but to prove that it is altogether vain, and grounded upon no good Authorities, either from Hiſtory or Records; but I ſhall ſhew you before I have done, that the *Magna Charta* which we have ſtill upon Record, by *Inſpeximus* of *Edw.* I. is the very ſame Word for Word, in all the material Parts of it, with that of *Henry* III. both of the 2d and 9th Year of his Reign; and that there was no Alteration at all made as to the manner of it, as ſummoning or chuſing Members of Parliaments from the beginning of this King's Reign to the very end of it. Nor yet in the Time of *Edward* I. as you ſuppoſe.

M. I ſhould not be diſpleaſed to ſee that proved, though I think I am able to ſhew you the contrary. But before we proceed to that, I muſt needs tell you, I am not yet ſatisfied that there ever were anciently Two Councils; one of the Tenants *in Capite*, and the other of the whole Kingdom; for methinks not only your ſelf, but Mr. *Petyt*, and Mr. *Atwood* his Second, have fallen very ſhort of their Proofs they have brought in this Point: and there is nothing in the Doctor's whole Anſwer to them, in which (in my Opinion) he hath obtained a clearer Victory; therefore pray give me ſome better Proofs of this Diſtinction, if you have any.

F. I did not imagine I ſhould have needed to have ſpoken any further upon that Head; yet ſince you now require it, I ſhall obey your Commands. Since therefore you tell me that the Times before your Conqueſt are obſcure, and the Authorities uncertain, I will give you a ſhort Hiſtory of theſe Councils, beginning with King *William* I. and ſo going down as low as *Henry* III. So far then we are agreed, that the Council of Tenants *in Capite*, met *ex more* at the great Feaſts of the Year; and that they alſo granted the King Aids, or Subſidies, to be Levied upon themſelves alone; as I grant, appears by the Writ of 19th of *Henry* III. which you have but now cited, directed to the Sheriff of *Suſſex*.

But that this Council which was thus held *ex more*, was alſo often Summoned to meet at other Times when the King's Occaſions required it, is alſo as certain; as appears by this Writ of the 26th of the ſame King, which I ſhall read to you, *Rex Vice-comiti* Northampton, *&c. Præcipimus tibi ſicut alias Præcipimus, quod Summoniri facias Archiepiſcopos, Epiſcopos, Comites, Barones, Abbates, Priores, Milites, & liberos homines qui de nobis Tenent* in Capite, *eodem modo ſcribitur omnibus Vice-comitibus Angliæ*: Which Writ extending only to thoſe who held *in Capite*, could never be a Summons to the Common Council of the whole Kingdom: for then this Reſtriction had been needleſs, *qui de nobis Tenent* in Capite; and it would have been known who had a Right to come to this Council, if theſe Words had not been inſerted; ſo that this ſeems to make a plain Diſtinction between theſe *Liberos homines qui de nobis Tenent* in Capite, and the reſt of the Freemen of the whole Kingdom. *Rot. Clauſ.* m. 7. *dorſo.*

But when *Eadmerus* and other Ancient Hiſtorians mention the great or Common Council of the whole Kingdom (afterwards called the Parliament,) then their Expreſſions are more general and comprehenſive; for proof of which, pray conſult the Old *Engliſh Saxon* Annals, continued down to the Time of *Henry* I. wherein *Anno Dom.* 1085. (being the laſt Year of *William* I.) there is a remarkable Paſſage which I ſhall here give you in *Engliſh*. 'At *Chriſtmas*, the 'King (*viz. William* I.) was at *Glouceſter* with his Nobles, and there held his 'Curia or Court (in *Saxon* his *Hired*) Five Days; (and immediately after it fol-'lows thus:) Preſently after this he held a Great Council [in *Saxon*, *Mycel 'Getheat*] where he had many great Diſcourſes with the Nobles, *&c.* Now it ſeems plain to me, that this ordinary Court (here called his *Hired*) could not be the Great Council of the Kingdom; for to what purpoſe ſhould it meet again ſo quickly, if it had been the Common Council of the whole Kingdom? Or, why are they here called by different Titles, the one his *Hired*, or Court, and the *Publiſhed at* Oxford, 1692. *in* Saxon *and* Latin. *p.* 186.

2 *Vol. F.* 451. other the *Mycel Getheat*, the Great Council; which is alſo called *commune Concilium totius Regni*, in Sir *Henry Spelman*'s Councils in this very Year.

And to ſhew you more plainly the Difference between this Great Council of the whole Kingdom, and the Leſſer Council of the King's Barons and Te-

Lib. 3. *F.* 58. nants *in Capite*; pray ſee *Eadmerus*, who relating what was done in a Great Council held at *Eaſter*, immediately before the Invaſion of *Robert* Duke of *Normandy*, in the 2d Year of *Henry* I. ſays, there met *tota Angliæ Nobilitas, cum Populi numeroſitate*; and then Archbiſhop *Anſelm* engaged for the King, that he ſhould Govern the Kingdom according to the juſt Laws thereof. Where you ſee, that beſides the Noblemen and Gentlemen, here called, *Regni Nobilitas*, there was alſo a great Number of the Commons, here termed in the Barbarous *Latin* of that Age, *Populi numeroſitas*.

But when the King held his *Curia* of the Great Lords and Tenants *in Capite* alone, the Expreſſions are more particular; as may appear by many Charters of our firſt *Norman* Kings to ſeveral Abbeys of their own Foundation, which are ſaid to be made *Conſilio & Aſſenſu Baronum noſtrorum tam preſulum quam Laicorum*; as you will (for Example) find it in the Charter of *Henry* I. to the Abbey of *Abington*, as it is exemplified in the Ancient Manuſcript Regiſter of that Abbey, now in the *Cottonian* Library; in which Book you will find more of the like Nature; which plainly make out this Difference between this Leſs Council of the King's Barons and Tenants *in Capite*, and the Great Council of the Kingdom.

And for further Proof of this, pray ſee the Inſtrument of King *John*'s Reſignation of his Crown to the Pope, as you will find it at the end of Doctor *B*'s compleat Hiſtory; which is recited to have been done *Communi Concilio Baronum Noſtrorum*, that is, by the Common Council of the King's Barons and Tenants *in Capite*, a great Number of whom were there preſent in Arms againſt the Landing of the *French* King, then expected. And yet this was never looked upon to have been done *per Commune Concilium Regni*, ſince this Reſignation was declared void by the Biſhops, Lords, and Commons in full Parliament, in the 40th of *Edward* III. becauſe done *ſanz lour Aſſent*, as it is in the Parliament Roll of that Year.

But whenever the whole Great Council or Parliament was ſummoned to aſſemble, then this Leſſer Council of the Tenants *in Capite*, muſt needs meet alſo, as being a principal part of it. And then the Expreſſions were more comprehenſive, as I have already noted; and our Ancient Hiſtorians do, in my Opinion, by their Expreſſions, plainly ſignify an Union of both theſe Councils to make up the Common Council of the Kingdom; as appears by the Letters which the Prior of *Canterbury* wrote to the Pope, upon the Election of *Ralph* Biſhop of *Rocheſter*, in the 14th of *Henry* I. to the See of *Canterbury*, as you find them in *Eadmerus*, (*Lib.* 5. *Fol.* 111.) and which is there ſaid to have been made *adunato conventu totius Angliæ*; that is, in the united Aſſembly of all *England*, *viz.* as it follows immediately, the *Epiſcopi, Abbates & Principes Regni, & ingens Populi Multitudo*. So likewiſe *Hoveden* in his Hiſtory, (*Fol.* 273.) *Anno* 1121, (being the 18th of *Henry* I.) relates the King's Marriage with the Lady *Adeliza*, Daughter to the Duke of *Lovain*, to have been celebrated at *Windſor*, *adunato Concilio totius Regni*, *i. e.* in the United Council of the whole Kingdom.

M. I am not yet ſatisfied with your Proofs: And I doubt not but to ſhew you that this Diſtinction of your Friends Mr. *P.* and Mr. *A.* his Second, between the Common Council of the Kingdom, and the Council of the Great Lords and Tenants *in Capite*, will prove but a meer *Chimera* of thoſe Gentlemen, from whom you have borrowed it; for there was indeed but one Common Council of the Kingdom in thoſe Times, *viz.* that of the Biſhops, Earls, Barons, and other Tenants *in Capite*.

And therefore in anſwer to your firſt Authority from the *Saxon* Chronicle, I ſhall ſhew you another of the ſame King's Reign, which will ſhew the different Expreſſions of this great Council by *Hired*, and *Micel Getheat*, to have been the particular Fancy of that Monkiſh Writer, and it is from *Gervas*

Col. 1651. *Dorobornenſis, de Actis Pontificum Cantuarienſ. Eccleſiæ*, where you may ſee in the *Decem Scriptores*, this Paſſage, *Anno* 4. *Regis Wilhelmi* I. *Anno Dom.* 1070.

Lanfrancus Cadomenſis Abbas electus fuit Archiepiſcopus Cantuarienſis a Senioribus ejuſdem Eccleſiæ cum Epiſcopis, & Principibus, Clero, & Populo Angliæ in Curia Regis in Aſſumptione Sanctæ Mariæ; where you may ſee that this Confirmation of the Archbiſhop was made in the great Council of the Kingdom, which is here called collectively, or all together, (and not one Part of it only) *Curia Regis*. As for the Words which make up the conſtituent Parts of this Council, we have ſufficiently debated them; and therefore I need ſay nothing more concerning them.

But tho' the Dr. has given us more Authorities to prove this, yet I ſhall make uſe of but one more from *Eadmerus*, it is in the Reign of *Henry* I. thus, *in ſubſequenti Nativitate Dom. Chriſti Regnum Angliæ ad Curiam Regis Lundoniæ pro more convenit, & magna Solemnitate habita eſt*, &c. This Inſtance is full in all Points; here is the whole Kingdom, that is, the whole Baronage or Univerſity of *England*, (for *Bracton* tells us, the whole Kingdom conſiſted of Earldoms and Baronies) who met according to Cuſtom, at the King's Court: And hence it is manifeſt, that at thoſe Times the Common Council of the Kingdom was held; and from this alſo, as from the former Inſtances, that the *Barones, Principes, & Optimates, & Majores Regni*, did at thoſe great Feaſts, *pro More*, according to the Cuſtom, frequent the King's Court, and were the only Perſons that conſtituted that great Aſſembly. *Fo.* 125.

F. But pray give me leave to interrupt you a little. Did I not tell you but now, that the King did often convene the Common Council of the whole Kingdom to meet the Biſhops, great Lords, and Tenants *in Capite*, at one of theſe Feaſts; and ſo it might be an Aſſembly *ex More* in reſpect of them, but extraordinary to all the reſt of the Kingdom; and this often happened at other Times as well as at theſe Feaſts, according as the King's Occaſions required, when all the others were ſummoned on purpoſe. *P. R. C. Pag.* 130.

M. I have already anſwered that Objection; and granting it might be ſo, it does not prove it was ſo: But I deſire you to tell me what you can ſay to this Expreſſion in the Authority I have now made uſe of from *Eadmerus*; *Regnum pro more convenit*, which is ſpoken of the moſt general Council when the Kingdom of *England* then met at the King's Court. So that your ſmall Chriticiſm upon the Words *adunato Conventu* or *Concilio*, as if they ſignified this Union or Conjunction of two Councils into one, is but a meer Fancy of your Anthors, thoſe Words ſignifying no more than a gathering or meeting together of all the Perſons that conſtituted that Aſſembly, as appears by theſe Words in *Eadmerus*, *Adunatis* (without either *Præcepto* or *Sanctione Regis*) *ad Curiam ejus in paſcha Terræ Principibus*, *i. e.* the chief Men of the Nation being aſſembled at his Court at *Eaſter*. *Fol.* 90.

But as for your main Inſtance of King *John*'s Reſigning his Crown to the Pope in a Common Council of the great Lords and Tenants *in Capite*, but not of the Common Council of the Kingdom, I confeſs it were very conſiderable if it were true; for tho' in all the Charters of this King's Reſignation, the Words you mention, *viz. Communi Concilio Baronum noſtrorum* are inſerted, yet it could not be a great Council; ſince tho' I grant that all the Tenants *in Capite* were at that Time ſummoned to appear in Arms againſt the King of *France*; yet it being a Military Summons for the gathering together of an Army, and not for the Meeting of a great Council; for the five proſcribed Biſhops were in *France*, and the Barons that ſided with them, fled beyond Sea, not daring to appear; ſo that this Reſignation having been Executed before ſo ſmall a Number of Barons as appears by the Witneſſes to it, *viz.* but Two Biſhops, the chief Juſticiary, Seven Earls, and Three Barons, without ſubjoining *& aliis Epiſcopis, Comitibus, & Baronibus*, or *& Communitate*, or *tota Communitate*, it does not appear that there were any more preſent; ſo that this could not be ſuch a Council as was conſtituted by King *John*'s Charter, that is, it was not a Parliamentary Council, or general Repreſentative of the whole Nation; and therefore the Parliament in the 40th of *Edward* III. might very well ſay, the Reſignation was made without their Aſſent; and ſo I think this great Argument of yours comes to nothing. *B. A. F.*

F. Pray do not triumph before the Victory. For I doubt not but to prove, notwithſtanding what you have ſaid, that this was a real Common Council of

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Vi. Matt. page 234.

the Barons and Tenants *in Capite*, in which King *John* reſigned his Crown, tho' not of the Kingdom; which I prove thus. Firſt, it appears by all our Hiſtorians, that King *John* had juſt ſummoned all the Earls, Barons, Knights, and Freemen of the Kingdom, whoever they were, and of whomſoever they held, to appear in Arms; which made ſo vaſt an Army, that after all the ordinary Rabble were ſent home, *Matt. Paris* tells us, that the Knights, Eſquires, and Freemen that ſtay'd behind, made an Army of Sixty Thouſand Men, who were encamped at *Barham Down*, not far from *Dover*, where this Reſignation was executed: So that this being almoſt as great a Meeting as that at *Runne Mead*, the King might about the ſame Time very well have ſummoned at leaſt a great Council of all his Tenants *in Capite*, to countenance this Reſignation; and that he did do ſo, the Charter it ſelf ſays expreſly; which had it been otherwiſe, would have appeared a notorious Lye to the whole World. Nor are your Objections to the contrary conſiderable. For, you ſay this was only a Military Summons, and not to a Common Council, yet ſuch a one as was conſtituted by this King's Charter, which ſure could not be at this Time, when that Charter was not yet made till the Year after, before which, you grant, that the great Councils, might have met without the 40 Days Summons, expreſſing the Cauſe of their Meeting; and if they could meet *ex More*, as you grant this Council did at the great Feaſts of the Year, without any Summons at all, ſure they might as well meet now on ſuch an Exigency: The King had, 'tis true, ſummoned them at firſt upon another Occaſion; but ſay you, there was ſo ſmall a Number of Barons at this Meeting, that it could not be a Common Council of the whole Kingdom; neither do I ſay it was, but the contrary; but how doth it appear it was not? Why ſay you, Five of the Biſhops were then fled into *France*, with a great many of the Barons of their Party. The latter is not true in Fact; few or none of the Barons ſiding with theſe Biſhops; but as for the Biſhops, what if Five were abſent? Were there not enough left to have made a Common Council of the reſt of the Tenants *in Capite*? Well, but there were but Two Biſhops preſent, and Seven Earls, and Three Barons, as appears by their Names at the End of this Charter, without any mention of more, or of the whole *Communities* being there. A ſpecial Reaſon, as if no more could be preſent at this Aſſembly than whoſe Names are to it; by this Rule, the great Charters of King *John*, and 9th of *Hen.* III. were not made in a great Council of the whole Kingdom; for there are no Witneſſes Names expreſſed at the End of them; 'tis true, at the Beginning of theſe Charters it is ſaid they were done by the Council of certain Biſhops, Earls, and Barons, which yet were but a very few more of all Sorts than there are mentioned at the End of this Charter of King *John*'s Reſignation: So that this Appearance of the Biſhops, Earls, and Barons, and Tenants *in Capite* is meerly precarious; for if more might very well have been there, it is moſt likely they were, notwithſtanding the Paucity of the Witneſſes to this Charter; ſince thoſe were added only for Form ſake, and were commonly thoſe who were neareſt the Throne when the Seal was put to it.

I confeſs your firſt Objection is more material from *Eadmerus*, of the whole Kingdoms meeting the King at *Chriſtmas ex more*, without any Summons mentioned; to which it may be reply'd, that there might be a Summons to the whole Kingdom to meet, as well as to the Tenants *in Capite*; and this happening at *Chriſtmas*, one of the uſual Times of their Meeting, this Author might apply the Title of this Court to the Council of the whole Kingdom: And that this was ſo, will appear from an *Anonymous* Author who wrote in *H.* I. his Time, publiſhed by Mr. *Sylas Taylor*, in his Hiſtory of *Gavel-kind*, (*p.* 194) who relates this Election of Archbiſhop *Lanfranc* to have been made *Communi Conſenſu & Conſilio omnium Baronum ſuorum, omniumque Epiſcoporum, & Abbatum, totuſque Populi*; which certainly muſt mean ſomewhat more than your Council of Tenants *in Capite* alone.

And this alſo is confirmed by *Mat. Paris*, who has been ſo careful, as to mention a Summons to a great Council immediately after the holding of the *Curia* of Tenants *in Capite* at *Chriſtmas*; the Words are thus: *Anno Dom.* 1237. *i. e.* the 21ſt of *Henry* III. *tenuit Rex curiam ſuam ad natale apud Winton miſit, autem continuo per omnes fines Angliæ Scripta Regalia præcipient omnibus ad Regnum ſpectantibus, Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, Comitibus & Baronibus, ut omnes in octabis Epiphaniæ Londoniis convenirent.* Now

pray

pray tell me, if this *Curia* held *ex more* at *Chriſtmas*, had been the Great Council of the whole Kingdom, conſiſting of the Archbiſhops, Biſhops, Abbots, Earls and Barons, and other Tenants *in Capite*, to what purpoſe ſhould the King *continuo*, (*i.e.* immediately after) iſſue out his Writs for Summoning the very ſame Perſons to meet him at *London* on the *Octave* of St. *Hillary*, when they were then all with the King at *Wincheſter*; and that he might then have communicated what he had pleaſed to them.

Or what have you to ſay to the *Curia* or Council held before, in the Ninth of this King, but Eleven Years after King *John*'s *Magna Charta*, when the Great Charters were confirmed, and an Aid granted by the whole Kingdom? which *Matt. Paris*, *Anno Dom.* 1225. relates thus: (which tho' I gave you at our laſt meeting, it will not be amiſs to repeat again:) *Rex Henricus poſt natale tenuit curiam ſuam apud Weſtmon. præſentibus Clero & Populo cum Magnatibus Regionis*; which Words (as I have already urged) muſt comprehend ſome other Perſons than your Tenants *in Capite* alone; otherwiſe the Word *Populos* had been altogether in vain. So that you ſee the Common Council of the whole Kingdom was often held at the ſame Time with the ordinary *Curia*, and is by way of Excellency called by the ſame Name as we at this Day call the Great Council of the Kingdom, the High Court of Parliament: And *Curia* and Court differ no more than a *Latin* Name from an *Engliſh*; which is likewiſe very well confirmed and explained in the Chronicle of *Walter* of *Coventry* (to be found in divers Libraries) who lived in the Reigns of King *John* and *Henry* III. and ſpeaking of this very Council or Parliament (which though it might begin at *Chriſtmas* with the *Curia*, yet it ſeems held on till *Candlemns*) when the Commons were joined to it; he ſays thus; *In Purificatione beatæ Mariæ convocantur apud London, Proceres Angliæ, ibiq; tractatu habito diffuſiore, cum Clero, & Populo ibidem convocato, Rex conceſſit Libertates tam Eccleſiæ, quam Regni, quam Foreſtæ, ſicut cartæ ſuæ ſunt inde confectæ.* Now I leave it to your ſelf to judge, whether by theſe Words, *Tractatu diffuſiore habito cum Clero, & Populo, &c.* (put after the calling of the *Proceres*, *i.e.* Great Lords and Tenants *in Capite*), any thing can be meant but the inferior Clergy and Commons: All which being joined in one Body, made up the *Commune Concilium Regni.* And that this was ſo, appears by the date of this Great Charter it ſelf, 11 *Februarij nono Henry* III. But that the whole Council or Parliament when thus joined, was likewiſe called *Curia Regis*, I can prove by ſeveral Examples; Among which ſee the Stat. of *Merton* in 20 *Henry* III. beginning thus; *Proviſum eſt in curia Domini Regis Henrico*, &c. *coram Will. Cant. Archiepiſcopo & Epiſcopis ſuffraganeis ſuis, & coram majore parte Comitum & Baronum Angliæ ibidem exiſtentium pro Coronatione ejuſdem Regis, pro qua omnes vocati fuerunt, ita proviſum fuit, & conceſſum tam a predictis Archiepiſc. Epiſ. Comitibus, Baronibus, quam ab ipſo Rege, & Aliis.* Now who can theſe *Alij* mean, coming thus after *Barones*, but the Commons as now underſtood?

M. I confeſs theſe Authorities you have now brought carry ſome Colour of an Argument, but if they are look'd into will ſignify little. To begin with your firſt Quotation from *Matt. Paris*; Suppoſe I grant that there was a *Curia ex more* held at *Weſtminſter*, at which there then appear'd at Court only a ſmall number of the Biſhops, Lords, and great Tenants *in Capite*: But the King not finding them enough for the great Affairs he had then to communicate to them, immediately iſſued out his Royal Writs to all the Orders of Men there mentioned, to appear at *London* on the *Octaves* of St. *Hillary*; but how can you affirm there were any Commons then ſummoned in the Senſe in which they are now taken, the Barons being the loweſt Order here expreſly mentioned? But if you would but have read the Words that immediately follow in this place you have now cited, you would eaſily ſee that your Knights of Shires and Burgeſſes could not then be there; the Words are theſe, *venit igitur die Sancti Hillarij Londonias infinitum Nobilium multitudo*: How could theſe Repreſentatives of the Commons have been elected and returned in ſo ſhort a Time as between *Chriſtmas* and Eight Days after *Twelfſtide*? So that there could have been ſcarce Three Weeks Time from the Date of the Writs preſently after *Chriſtmas-day*, to the meeting of the Parliament. But the Truth is,

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by this *infinita Nobilium Multitudo*, who are here ſaid to have come to *London*, is to be underſtood the great Number of the ſmaller Tenants *in Capite*, who all appeared at this Council according to King *John*'s Charter: Whereas your Knights of Shires, Citizens and Burgeſſes, if they had all come at that Time, could not be called *infinita Nobilium Multitudo*, as not conſiſting at this Day of 600 Perſons; and ſure would have been fewer then. But as for your other Authorities, if this be true I have now laid down, they will be as eaſily anſwered; ſince by the word *Populus*, (put before, and diſtinct from the *Magnates*, in the Paſſage you have now quoted from *Mat. Paris*) theſe ſmaller Tenants *in Capite* are to be underſtood; and by *Magnates*, the Biſhops and Great Lords. And this alſo explains the like Phraſe you now cite from *Walter* of *Coventry*; where by *Proceres & Populus*, are to be underſtood the ſame Orders of Men, as by *Magnates & Populus*, in *Mat. Paris*: So that it was with the Smaller Tenants *in Capite*, and the Inferior Clergy, with whom the King had this larger or more diffuſive Treaty, as this Author words it.

F. I confeſs, you have now put a very fair Gloſs upon theſe Places I have now made uſe of: But 'tis an Hundred Pities that ſuch a fine Hypotheſis ſhould have no better Proofs, than bare Surmiſes, to ſupport it; for that is all the Authority that I can ſee you bring for your Senſe of this Word *Populus*, for the ſmaller Tenants *in Capite*, and not for the reſt of the People; but I ſee no good Authority as yet brought by you to prove it, except that Clauſe in King *John*'s Charter; which if (as I have lately ſhewed you) it will bear a quite different Interpretation, all that you have ſaid upon that Head will ſignify nothing. Therefore, as for the main Argument you raiſe from the Words, *infinita Multitudo Nobilium*, in *Mat. Paris*, that they could not be the Knights of Shires, together with the Citizens and Burgeſſes, becauſe they could not be ſuch an infinite Multitude as this Author here mentions to have met at *London*; as alſo becauſe of the Shortneſs of the Time of the Summons: If theſe are material Objections againſt our Opinion, ſo it will be likewiſe againſt yours: For how could this be a Great Council, acccording to King *John*'s Charter, which expreſly provides for Forty Days Summons, for the Tenants *in Capite* to come to this Aſſembly? And if ſo be this Uſage was broken at this Time, upon ſome urgent Occaſion, in reſpect of them; it might be ſo alſo as to all the reſt of the Kingdom; for the *Knights* of Shires might be choſen at the next County-Court, and their Names returned immediately before, or together with their Meeting at *London*. And as to the Citizens and Burgeſſes, it was yet more eaſy for them to be choſen and returned in Three Weeks Time; ſince every body knows, the Cities might have called Common Councils; and the Towns and Boroughs, by the Notice of their proper Officers, to whom the Writs were deliver'd, might have aſſembled at their uſual Places of Electing, immediately upon the Receipt of the Writs; and theſe, together with the Knights, Citizens and Burgeſſes, join'd with the Great Lords and Tenants *in Capite*, made up the *infinita Nobilium Multitudo*, mention'd by *Mat. Paris*.

But your main Objection, I confeſs, is behind; how theſe Repreſentatives of the Commons, here called *infinita Nobilium Multitudo*, could be the Knights, Citizens and Burgeſſes; whoſe Number could not be, at that Time, above 500 Perſons? As for this, pray conſider, if the Difficulty will not bear as hard upon you: For if your Tenants *in Capite* made ſuch a vaſt Multitude; all thoſe Difficulties will ariſe, that you preſs me with upon my Hypotheſis, of the Meeting of all the chief Freeholders (or Lords of Manors in *England*) in Parliament, before Knights of Shires were introduced in the room of them; *viz.* How it was poſſible for ſo great a Multitude to Debate, Vote, or do any Buſineſs; and what Room, or Church, was able to hold ſo many; and the like. So that granting all your ſmaller Tenants *in Capite* (ſome of whom had but one Knight's Fee apiece) to have met there, theſe might have made a Body of Five or Six Thouſand Men; which how they could have been managed any better than Ten Thouſand, or Twenty Thouſand, (which would have more than taken in all their Feudatory Tenants too) I deſire you would reſolve me, if you can. So that at laſt, upon your own Hypotheſis, this *Populus* (the People) conſiſting of the Tenants *in Capite*, were as much Commoners, as the Knights of Shires at this Day. For as for the Word *Nobilium*, I have already proved, (and you muſt needs here grant

grant it) that it takes in the Inferior Nobility or Gentry, under the Degree of Lords, as well as the Superior; and if ſo, why not all the Conſiderable Meſne Tenants of thoſe Tenants *in Capite*? So that you have hitherto brought no Proof, but your bare Aſſertion, that under this *infinita Multitudo Nobilium & Populus*, muſt be underſtood only the Great Lords, and Tenants *in Capite*; ſince either this Author ſpeaks hyperbolically, or elſe all the Chief Gentry of *England*, of whatſoever Tenure, might have as well appear'd at this Great and Extraordinary Aſſembly.

So that you are under this *Dilemma*; either this *Curia* (which you confeſs met *ex more*) was the Great Council of the *Kingdom*, or it was not: If it was not, then there was ſome other Greater Council beſides that; but if it was, then it will plainly follow, (tho' you do all you can to mince the Matter) that this Great Council of the Kingdom, or Parliament, met of courſe by ancient Cuſtom Three times in the Year, without any Summons at all from the King: Which if I ſhould have affirmed, you would have called it a Commonwealth Notion; ſince nothing can be a greater Proof, that this Aſſembly of the whole Nation in Parliament, did not, upon your Hypotheſis, immediately depend on the King's Writs of Summons, for their Aſſembling and Acting when met.

M. Well, ſince you can bring no direct Proof, that theſe were any other beſides the Tenants *in Capite*, who met at this Great Council; I have ſtill more Reaſon to ſuppoſe them to have been ſo, than you can have for the contrary Opinion; therefore pray give me (if you can) ſome clearer and later Proofs, for this Difference between the Two Councils.

F. I ſhall comply with your Deſires; and, in order to it, ſhall conclude with Two or Three of thoſe very Authorities the Doctor has given us in his Anſwer to Mr. *P.* Where he gives us this Paſſage out of *Mat. Paris*, in the 28th of *Henry* III. (which plainly proves the Tenants *in Capite* not to have been the common Univerſity, or ſole Repreſentative of the whole Kingdom;) pray read it: *Eodem Anno convenerunt regia ſummonitione, convocati Londinum, Magnates totius Regni, Archiepiſcopi, Epiſcopi, Abbates, Priores, Comites & Barones; in quo Conſilio petiit Rex ore proprio, in præſentia Magnatum*, (*i. e.* of all the Parties above-mentioned) *in Refectorio Weſtmonaſterienſi, Auxilium fieri pecuniare, cui fuit reſponſum quod ſuper hoc tractarent: Recedenteſque Magnates de Refectorio, convenerunt Archiepiſcopi, & Epiſcopi, Abbates & Priores, ſeorſim per ſe, ſuperque hoc diligenter tractaturi, tandem requiſiti fuerunt ex parte eorum, Comites & Barones, ſi vellent illis unanimiter conſentire in reſponſione & proviſione ſuper his facienda; qui reſponderunt*, (*ſcilicet* Comites & Barones) *quod ſine* Communi Univerſitate *nihil facerent; tunc de communi aſſenſu electi fuerunt ex parte Cleri, Electus Cant. &c.*

B. A. P. Fol. 639. A. D. 1244.

See p. 777.

+ in what the concurrence of the whole Body of Clergy & Laity

Now I think, here is as manifeſt a Diſtinction as need to be between the Lords and Commons, as Members of the Great Council, and the Common Univerſity of the whole Kingdom: For it is obvious, that when all the Lay-Lords, Earls and Barons (to whom you may alſo add your Tenants *in Capite*, if you pleaſe) being met together, were asked by the Biſhops, Abbots and Priors then preſent, Whether they would agree with them, or not? The Earls and Barons anſwered for themſelves, That they would do nothing without the *Common Univerſity*; which could not poſſibly be only the Lords Spiritual and Temporal, and Tenants *in Capite*, ſince they were now all here, and referred themſelves to another diſtinct Order of Men, different from themſelves, (who were not there preſent) as alſo from the Biſhops, Abbots and Priors, who demanded their Conſents to what they had agreed upon. Now if the Temporal Lords, and Tenants *in Capite*, had concurred; here had been the Conſent of the *Common Univerſity* of Lords, and Tenants *in Capite*. But beſides the Conſent of all theſe, there was, notwithſtanding, (it ſeems) required the Conſent of another Body of Men, called here the *Communis Univerſitas*; by which muſt be meant the *Commons*, or no body, ſince otherwiſe they might have all agreed together without any more ado.

J. A. A. p. 207, 208.

M. I confeſs, this Story out of *Mat. Paris* looks ſomewhat plauſible at the firſt on your ſide; but I doubt not, if it be better conſider'd, it will do you little Service: For what if by this *Common Univerſity*, is to be underſtood the whole Body of Leſſer Tenants *in Capite*; who not ſitting with the Lords at

that Time; they would do nothing without their Conſents, till it was propoſed to them. But that they did afterwards all agree; Pray read the reſt of this Narration, and it will make it clear enough, that this *Common Univerſity* of Tenants *in Capite* did alſo agree with the Lords, Biſhops, and Abbots: The Words immediately following in *Mat. Paris*, are theſe: *Tunc de communi aſſenſu electi fuerunt ex parte Cleri, Electus Cantuarienſis, Wintonienſis, Lincolnienſis, & Wigornienſis Epiſcopi ex parte Laicorum, Richardus Comes Frater Domini Regis, Comes Bigod, Comes Legr. S. de Monteforti; & Comes Mareſchallus ex parte vero Baronum Richardus de Montfichet & Johannes de Baliol, & de Sancto Edmundo, & Rameſeia Abbates; ut quod iſti duodecim praviderent in communi recitaretur, nec aliqua forma Domino Regi oſtenderetur Authoritate duodecim niſi omnium communis aſſenſus interveniret.* From which laſt Paſſage it appears plain to me, that in this Parliament the ſeveral Orders of Men that were the conſtituent Parts of it, were only the Biſhops, Abbots, Priors, Earls, and Barons: And that all theſe put together were termed the *Common Univerſity*, which is more comprehenſive than Univerſity ſimply taken. Now if the Commons, as at this Day repreſented had been there, we muſt have had ſome Mention of them one way or other; as well as of the Committees of the other Orders which made up the general Committe of Twelve; ſo that it is plain beyond doubt, that the Commons were not part of the *Common Univerſity*.

F. Then pray tell me who they were; for the Hiſtorian tells, that when all theſe Biſhops, Abbots, Priors, had now met together, with the Earls and Barons; yet theſe laſt tell them, that without the Common Univerſity they could do nothing; which had been Nonſenſe, if, as your Doctor ſuppoſes, the whole Univerſity or Community of the Kingdom had been all preſent.

M. I muſt confeſs this is a material Objection; but what if to help him out, I ſhould tell you, that by the Common Univerſity here mentioned, is to be underſtood the Body of the Inferior Tenants *in Capite*, under the Degree of Barons; and this Common Univerſity of Tenants *in Capite* might not have been preſent, and ſat with the Earls and Barons at that Time, when the Biſhops and Abbots made this Propoſal: Therefore the Lords might very well anſwer, That till they had conſulted the Common Univerſity, or Body of Tenants *in Capite*, they could do nothing. And though this Body of Tenants *in Capite* did not then actually ſit with the Earls and Barons; yet doth it not follow that they made a diſtinct Eſtate by themſelves, different from that of the Lords or greater Tenants *in Capite*: For then the Archbiſhops, Biſhops, Abbots, *&c.* (who are here expreſly ſaid to have conſulted by themſelves,) muſt have done ſo likewiſe: Therefore, hough our Author is not ſo particular as he might have been; yet certainly this Common Univerſity were thereupon conſulted, and gave their Aſſents to the Choice of this Committee of Twelve, who were to draw up their Anſwer to the King: For the Words are, *Tunc ex communi aſſenſu electi fuerunt*; which ſeem to refer to the Common Univerſity or Body of Tenants *in Capite*; or elſe the Lords Excuſe, as well as the Election of theſe Perſons by the Biſhops, Earls, *&c.* had been very inſignificant.

F. This ſeems to me to be a precarious Aſſertion, and without any due Proof; for tho' the Words are *Tunc ex Communi Aſſenſu*, yet I very much doubt whether theſe Words do refer to the *Common Univerſity of the whole Kingdom* or not. For you your ſelf confeſs, *that* Mat. Paris *is ſhort in this Point*; and that it was not ſo, ſeems more likely to me by this material Circumſtance, that not one Perſon of the Twelve but was either a Biſhop, Earl, or Great Baron. (For that *Richard de Montfichet*, and *John de Baliol* were ſo, Sir *William Dugdale* hath proved in his Baronage of *England*:) Whereas, if the Univerſity or Body of the Tenants *in Capite* had joined in this Election; it is not likely but they would have Choſen ſome of their own Body to repreſent them in this Committee, who were not Earls or Barons. Since your ſelf muſt confeſs, that there then were a great Body of Men who were not Lords, nor did at this Time Sit or Act jointly with the Lords, or greater Barons in this Aſſembly. And likewiſe it farther ſeems highly probable, that this *Common Univerſity* of Tenants *in Capite* (take it in your Senſe) did not give any Reſolution in this Matter; ſince we do not find any Money given in Anſwer to the King's Requeſt, but only

Tom. 1.

Complaints

Complaints of, and Orders about Redreſſing of Grievances; which was in thoſe Days often done in a Great Council of the Biſhops, Lords, and Tenants *in Capite*.

But I ſhall ſhew you now by ſome other Records which the Doctor himſelf hath made uſe of, that there often was a diſtinct Aſſembly or Council of the Lords and Tenants *in Capite*, different from that of the Commons or Commonalty of the whole Kingdom. The firſt Record is to be found among the Patent Rolls of the 42 *Henry* III. beginning thus; *Rex omnibus*, &c. *cum negotiis noſtris arduis, nos & Regnum noſtrum contingentibus, Proceres, & Fideles Regni noſtri ad nos London. In Quindena Paſchæ proximæ præterita faceremus convocari, & cum de Negotiis ſupra dictis, & maxime de proſecutione Negotij Siciliæ diligenter cum iiſdem tractaremus, ac ipſi nobis reſponderunt quod ſi ſtatum Regni noſtri, per Concilium Fidelium Noſtrorum ratificandum duxerimus, & Dominus Papa Conditiones circa factum Siciliæ appoſitas melioraverit, per quod Negetium illud proſequi poſſemus cum effectu, ipſi diligentiam fideliter apponent erga Communitatem Regni noſtri quod nobis Commune Auxilium ad hoc præſtetur*, &c. The reſt I ſhall not trouble you with, becauſe it is not to our preſent purpoſe. *B. A. P. Pag.* 197. *M.* 16.

But you may here ſee, that taking the Words *Proceres* and *Fideles* in your own Senſe, the former for the Biſhops and Lords, *&c.* and the latter for the Tenants *in Capite*, who were called to conſult about the Buſineſs of *Sicily* (which Kingdom the King had before too raſhly accepted of from the Pope:) Yet tho' they were all met, they could do nothing but give him Advice, and could give him no *Commune Auxilium*, *i. e.* common Aids or Subſidies, without the Conſent of the Commonalty of the Kingdom. Now what can this *Community* ſignify but the *Commons*; for your Lords and Tenants *in Capite* were all met already, and if they alone made up the *Common Univerſity* or Body of the Kingdom (as you ſuppoſe,) why could they not have immediately granted the King the Aſſiſtance he deſired (if they had a ſufficient Power ſo to do,) without putting him off with a Promiſe, that they would uſe their endeavour with the Community of the Kingdom, (as a diſtinct Order or *Body of Men*,) that this Aid or Subſidy ſhould be given him: And upon this Condition it is, that at the end of this Record, the King promiſes them, that before *Chriſtmas*, he would mend the State of the Kingdom, *per Conſilium Proborum & Fidelium Hominum noſtrorum*, which can mean nothing leſs than a Parliament. Which the next Record in the ſame Roll recites, was to meet at *Oxford* after the Feaſt of *Pentecoſt*. Which Record, ſince it not only recites the King's Oath, whereby he had bound himſelf to obſerve the Direction of a Committee of 24 *Fideles*, i. e. *Faithful* or *Loyal Men*, Twelve of which were to be choſen out of the King's Council, and the other Twelve by the *Proceres* or *Magnates Regni*, as I have already proved, may take in the Commons as well as the Lords. But whether by theſe Words were meant the Lords or Commons, the Concluſion of this Record ſufficiently confirms my Argument from the precedent Record, that the Lords and Tenants *in Capite*, could not then Tax the whole Kingdom at their Pleaſure, without the Conſent of the Commons: Or elſe to what purpoſe are theſe Words in the Concluſion of this laſt Record; *Promiſerunt etiam nobis Comites, & Barones Memorati, quod expletis Negotiis ſuperius tactis, bona fide laborabunt ad hoc quod Auxilium nobis Commune præſtetur à Communitate Regni noſtri in cujus rei*, &c. *Dat.* 2 *die Maij*. And it appears by the Date, as alſo by the Entry on the Roll, that both theſe Records were perfected at once, and concerning the ſame Buſineſs. And further, to prove that the Parties appointed in the Record to be choſen *ex parte Procerum*, were not choſen by the Great Lords, or Peers only, may be ſeen from a Patent Roll of the ſame 42 *Henry* III. whereby *Henry de Wengham*, Dean of St. *Martin le Grand*, and then Keeper of the Great Seal; and *John Manſel*, Provoſt of *Beverlay*, were two of the ſaid Commiſſioners; tho' they were neither Barons nor Tenants *in Capite* (as I know of) but only Eminent Lawyers, and Men of Great Abilities (and ſo meer Commoners.) Yet *Mat. Weſtminſter* calls theſe Men *Proceres*, as you may ſee by this Paſſage, ſpeaking of this whole Committee, *Videntes ergo Proceres antedicti viginti quatuor, ad Regis & Regni regimen ſic Electi*, &c. *M.* 6. *Fol.* 391

Fol. 199. I ſhall now only conclude with a *French* Record, which the Doctor himſelf hath alſo given us at large, and which refers to the ſaid Committee of 24 above-mentioned: It begins thus, *Henry par la Grace de Dieu Roy d' Engleterre, &c. a touz ceus, &c. Sachiez ce pur le profit de noſtre Reaume é a la Requeſte de nos hauz Homes é Prodes Homes, é du* Commun *de noſtre Reaume, Otreyames ec vint quatre Homes euſſent poer, perque tout ee quil ordeneirent del Eſtat de noſtre Reaume ſuſt ferm eſtable*; the reſt being very long, you may read at your Leiſure; only I ſhall take Notice of the date of this Letter, to which the King alſo put to his Seal: The Concluſion being thus; *Ceſte choſe feu feite a Lundre landemaigne prochein apres la Gaule haut l' an de noſtre corronement quarente ſecunde.* And tho' the Doctor can make nothing of the Words *Gaule haut*; this happened, I ſuppoſe, either from the bad Writing of the Record, or from the Ignorance or Miſtake of the Tranſcriber; for it ſhould be *Gaule de Aut*, that is, the *Gule* of *Auguſt*; which is a great Holiday in the Church of *Rome* upon the Firſt of *Auguſt*, (called alſo St. *Petri ad Vincula*) in the Memory of St. *Peter*'s Chains curing of a *Roman* Virgin by her Kiſſing them.

Ibid.

Vi. Spel. Gloſ. Tit. Gula Auguſti.

I ſhall farther obſerve from this Record, that the *Hauz* or *Prodes Homes* mentioned in this Record, being taken in the Doctor's own Senſe for *High* and *Wiſe Men*, that is, the Earls, and Barons; yet the Words *é du Commune* that immediately follow them, muſt needs ſignify ſome Body of Men different from the former; or elſe it had been a notorious piece of Nonſenſe; ſince if the former Words had taken in all the Lords and Tenants *in Capite*, that is (in your Senſe) the whole Community of the Kingdom; to what purpoſe are theſe Words *è du Commune*, that are immediately ſubjoined? ſince the *hauz & Prodes Homes* would have ſerved to expreſs all the Lords and Tenants *in Capite*, whether taken as Great or as Wiſe Men.

M. I confeſs what you have now ſaid would carry ſome weight with it, were I not very well ſatisfied, that you impoſe upon your ſelf, by taking (as I told you at our laſt Meeting) theſe Words *Communitas*, *le Commune*, *& Communalti* in a wrong Senſe, for the Commons as they are now; when indeed theſe Words before the 49th of *Henry* III. nay the 18th of *Edward* I. (as the Learned Doctor ſhews us in his 2d Edition againſt Mr. *P.*) are always to be underſtood, either of the whole Repreſentative Body of the Kingdom in general, conſiſting of the Biſhops, Abbots, Earls, and Barons, together with all the Tenants *in Capite*, called by *Mat. Paris* and other Hiſtorians, *Communitas Baronagij*, or elſe for the Community of the Tenants *in Capite* alone, ſtiled *Communitas Regni* in our Ancient Records. And this I think I can prove to you by undoubted Teſtimonies; but ſince you are now upon the proving Part, pray ſhew me that theſe Words I now mentioned did ever ſignify the Commons of *England* in the Senſe they are now taken, before the Times we inſiſt on. And I have the more Reaſon to deſire this from you, becauſe it is chiefly from the miſtaken Application of theſe Words, that the Gentlemen of your Opinion have impoſed their falſe Notions upon the World.

F. I ſhall undertake what you deſire; and I hope if I cannot ſatisfy you, the Fault will not lie in my Authorities, but your Prejudices againſt them. In the firſt Place, therefore, let me mind you, how far you and I agreed at our laſt Meeting, when I granted you that theſe Words *Communitas*, *la Commune*, *& la Communalté*, now in Diſpute, were very Equivocal, and were often taken in different Senſes; as ſometimes, you ſay true, for the whole Repreſentative Body of the Kingdom; ſometimes for the Community of the Barons, and ſometimes for the Community of the Biſhops and Clergy; but never as I know of for the Community of the Biſhops, Lords, and Tenants *in Capite*, much leſs for the Body of Tenants *in Capite* alone; nor were you then able to prove to me, that theſe Words muſt neceſſarily be underſtood in your Senſe, for the Community of the Tenants *in Capite*. And tho' you ſhould prove them ſometimes to be taken in that Senſe, yet would it rather make againſt, than for your Opinion; ſince they muſt ſtill ſignify a different Body of Men from your great Lords, and conſequently as meer Commoners as your Knights of Shires at this Day; which is againſt your firſt general Aſſertion, that by theſe Words are always underſtood the Community of the Baronage only.

But

But to come to my Proofs (which I ſhall divide in Two Parts;) Firſt, I will prove that theſe Words *Communitas*, *le Commune*, and *Communalty*, when coming immediately after *Comites & Barones*, or Counts and Barons, or *Proceres*, in our old Statutes and Records, do always ſignify the Commons in the ſame Senſe in which they are now taken: And for Proof of this, I will begin with the Reign of *Henry* III. when theſe Words came firſt to be generally in Uſe, and ſo deſcend to his Succeſſors as low as *Richard* II. And if I can ſhew you, that theſe Words (ſo put) always ſignify the Commons, as well before, as after that Time; I think you have Reaſon to be ſatisfied, that there was never once upon a Time ſuch a ſtrange Alteration in the conſtituent Parts of our great Councils, as you ſuppoſed; and yet none of our Ancient Hiſtorians or Statutes ſhould ever take any Notice of it, till theſe modern Antiquaries took upon them to diſperſe theſe Clouds.

To begin firſt with the Words *le Commune*; pray remember the Patent Roll of the 48th of *Henry* III. which I mentioned at our laſt Meeting, *viz.* the Form of the Peace between this King, the Prince his Son, and the whole Body of the Kingdom Aſſembled in Parliament; the Title of which is thus: *Hæc eſt Forma pacis à Dom. Rege, & Dom.* Edw. *Filio ſuo, Prælatis, Proceribus omnibus cum* Communitate *tota Regni Angliæ communiter, & concorditer approbata.* Now pray what can theſe Words *Communitate tota* here ſignify, but another Body of Men diſtinct from the Earls and Barons, or elſe it would be a groſs Tautology. *P. R. C. Rot. Pat. 48 H. 3. M. 16. B. A. P.*

And pray compare this Form of the Peace now mentioned, with the Writs of Summons of the 49th of this King (when your Doctor grants the Commons were Summoned to Parliament after the ſame Manner as they are now) and ſee if there be any Change in the Terms; and for Proof of this, we need go no further than the very Writ of Expences (for the Wages of the Knights of Shires, which the Doctor himſelf has given us at large in his Anſwer to Mr. P.) it is the 49th of *Hen.* III. to the Sheriff of *Yorkſhire*, wherein, after other Recitals, it follows thus, *Cumque Communitates Comitatuum dictorum varias hoc Anno, fecerint præſtationes ad defenſionem Regni noſtri*, &c. He therefore commands the ſaid Sheriff, *quod duobus militibus qui pro Communitate dicti Comitatus præfato Parliamento interfuerunt*, &c. ſhould be paid their reaſonable Expences, *De Communitate Comitatus prædicti:* For going to, and ſtaying at, and returning from the ſaid Parliament, *&c.* From whence it appears, that the Word *Communitas* and *Communitates* in this Writ, cannot ſignify the Community of Tenants *in Capite* alone, but the Commons of the County in general; unleſs you can prove to me that none but Tenants *in Capite* had performed theſe *varias præſtationes* in the Writ, and that none but they then contributed to theſe Expences of the Knights of Shires; otherwiſe theſe Words muſt plainly ſignify the Commons in general, as they did in the like Writ of the 28th of King *Edward* I. which I ſhall give you by and by. But I ſhall firſt ſhew you a few other Records of this King's Reign, concerning the Word *la Commune* (which Mr. *P.* has given us); they are in the Patent Roll of the 51ſt of this King, wherein by the Counſel and Aſſent of the King of the *Romans, & des Counts, & des Barones, & la Commune de la Terre, He pardons the Earl of* Glouceſter, *and all his Company:* So likewiſe in the ſame Roll, the King, by the Counſel and Aſſent of the *ſaid Counts, and Barons, & de la Commune de la Terre*, Pardons the City of *London*, all manner of Rancor and ill Will. *Rot. Cl. 49. H. 3. M. 10. dorſo.* *P. R. C. Rot. Pat. 51. H. 3. M. 16.*

Now pray tell me a Reaſon, why ſhould not the Word *la Commune* in theſe Acts of Pardon, ſignify the ſame Thing as the Word *Communitas* in the Form of the Peace, and in the Writ of Expences of the 49th now cited? Since they come immediately after the Counts and Barons, and ſo muſt needs ſignify a Body of Men diſtinct from them. For there is the ſame Reaſon, why the Words *la Commune de la Terre*, ſhould here ſignify the Commons of the Land; as that the Word *Communitates Comitatus*, ſhould ſignify the Community or Commons of the whole County.

M. Will you give me leave to anſwer this Queſtion preſently, becauſe I confeſs it is very material, before you proceed farther? There may (in my Opinion) very good Reaſons be given, 1. Why the Words *Communitas & la*

Commune, may ſignify the Community of the Tenants *in Capite*, in the Form of the Peace, and Acts of Pardon; and yet ſignify the Commons of the County in general, in the Writ for Expences you have now mentioned: As Firſt, Becauſe the Subject Matter is different in the Form of the Peace, and Acts of Pardon, from that in the Writs of Expences; the one being the *Communitas Regni*, and the other *Communitas Comitatus* only, called alſo in the Plural Number, *Communitates Comitatuum*; and then I grant when thus uſed, it always ſignifies the Commons in general. And there may be likewiſe a ſufficient Reaſon given, why this great Change might have been made in the conſtituent Parts of our great Councils, and yet no change of Phraſes or Expreſſions might be made in our Records and Statutes, nor any Notice taken of it by our Hiſtorians; which is, becauſe the firſt Knights of Shires, being choſen out of, and by the Tenants *in Capite* only; the Change was imperceiveable at firſt, there being ſtill Men of the ſame Order, appearing in Parliament, for the whole Body of thoſe Tenants; the Difference being only in the Number, *viz.* Two, for a whole County; whereas before, all the Chief Tenants *in Capite* came in Perſon. And I am the more inclined to be of this Opinion, becauſe in this Writ of Expences of the 49th of *Henry* III. (which you have now cited) there is no ſuch Clauſe as is in the following Writs of like Nature, *prout in caſu conſimili fieri conſuevit*; which ſhews it to have been a new Thing for the Knights of Shires to have their Expences allowed them, that being the firſt Time of their Meeting in Parliament.

F. I confeſs what you ſay is very plauſible, were there any Colour of a Proof brought by you for it; but I ſhall ſhew you further, that your Diſtinction between the *Communitas Regni*, and the *Communitas Comitatus*, ſignifies nothing, unleſs you can prove that this *Communitas Regni* was not the Repreſentative of the *Communitates Comitatuum* mentioned in this Writ, and did not conſiſt of Perſons of the ſame Degree or Order; for the Writ of Summons of the 49th of *Henry* III. ſays no more than that theſe Knights ſhould be *de legalioribus & peritioribus militibus comitatus*, without limiting them to Tenants *in Capite*. But as for your Reaſon, why theſe great Alterations might be made in our great Councils or Parliaments, without any Notice taken of it, it is altogether precarious; for you have not yet, nor can, I believe, give me any ſufficient Authority (beſides the Doctor's bare Aſſertion) that ever none but Tenants *in Capite* were capable of being Elected Knights of Shires, or that none but ſuch Tenants by Military Service were the Electors.

Vid. Dial. 6th. And I think I have ſufficiently confuted the Vanity of that Aſſertion at our laſt Meeting, when I ſhewed you the falſe Interpretations you gave of thoſe Statutes of the 7th of *Henry* IV. and 10th of *Henry* VI. whereby you would have proved, that there was ſome Alteration thereby made, as to the Electors of the Knights of Shires at the County Court: Whereas, indeed, before thoſe Statutes, all Perſons of whatſoever Tenure, and of howſoever ſmall an Eſtate of Freehold, who owed Suit and Service to the County Court, were capable of being Electors; and conſequently of chuſing whom they pleaſed, as well Tenants *in Capite*, as others, to be Knights of the Shire; and that thoſe who were not ſuch Tenants were frequently choſen, in the Reigns of *Edward* the Third, and *Richard* the Second, I could bring ſufficient Proofs, were it worth while to inſiſt upon a Thing ſo certain.

But I ſhall go on to prove that the ſame Words, *viz. Communitas le Commune*, or *la Communalte*, were uſed in moſt of our Statutes and Records, to ſignify the Commons. I come therefore to the Reign of *Edward* the Firſt, and I pray, in the firſt Place, remember, what I took Notice of at our laſt Meeting concerning the Statute of *Weſtminſter* the Firſt, made in the Third Year of this King, beginning thus in *French*, *per L'aſſentement des Archeſques, Eveſques, Abbes, Priors, Counts, Barons, & tout la Communalty de la Terre, Illonques Summones.*

See the Old French *Statutes in* Tottle.

Now every one knows that *Communalty* is but *French* for the *Latin Communitas*, as appears by the firſt Writs we have left us (except that of the 49th of *Henry* the Third, now mentioned) *de expenſis Militum*, being of the 28th of this King, directed to the Sheriff of *Somerſetſhire*, to levy the Expences of the Knights for that County (who had ſerved in the laſt Parliament) *de Communitate*

Rot. Clau. 28th of Ed. 1. *m.* 12. *dorſo.*

munitate Comitatus prædicti; *i. e.* of the Commons of the said County in general. The same Clause is also in the Writs which were then issued for the Expences of the Citizens and Burgesses who served in this Parliament; which were also to be levied *de Communitate Civitatis vel Burgi*, which sure must mean the Commonalty, or Commons of all those Cities and Boroughs there mentioned; for the Record is, *Eodem modo scribitur Majoribus, & Ballivis pro Burgensibus Subscriptis:* And which is also more remarkable, these Writs contain this Clause, that the said Knights and Burgesses should have their Expences allowed, *pro veniendo, manendo, & redeundo a Parliamento prædicto prout alias in Casu consimili fieri consuevit*; which Words relating to a former Custom, not then newly began (as this Word *consuevit* in a legal Sense still imports) must needs relate to some Time much more ancient than the 49th of *Henry* the Third, or the 18th of this King; the former of which was but 26, and the latter but 10 Years before this 28th of *Edward* the First; in which Time there was not above Thirty Parliaments called, if so many. *Vid. 4th Part of Mr.* Pryn's *Parliament Register, p. 9.*

And further, that the Word *Commonalty* signified the Body of the Commons, and not Tenants *in Capite* in the Reign of this King, appears by the Statute or Ordinance (tho' the Year is uncertain) entituled, *Consuetudines Cantiæ*, which you may see in *French* in *Tottles* Collection; the Title of them is thus, *Ceux sont les usages les queax la Communalty de Kent Clayment avoir en Tenements de Gavel-Kind.* Now every body who knows any thing of *Gavel-Kind*, knows also it was generally a Soccage Tenure, there being but little of it held by Knight's Service, and consequently the Owners of such Lands who were then the greatest Part of that County, are here called *la Communalty de Kent.*

So likewise in the Reign of *Edward* the Second, the same Words are used in the same Sense; as in the Statute of Pardon for the Death of *Pierce Gaveston* made in the Seventh of this King; which is granted *per nous* (*i. e.* the King himself) *per Archiesques, Evesques, Abbes, Priors, Counts, Barones, & la Commonalte de nostre Roiaume illonques assembles.* *See* Tottle's *Collection.*

So also in the *Latin* Records, as appears by an Act of Pardon granted by Parliament, in the 12th Year of this King: *Consentientibus Prælatis, & Proceribus, & Communitate Regni.* So likewise the Statute of *York* of the same Year, writ in *French*, is recited to have been made *per Assent des Prelates, Counts, Barons, & la Commune de Royalme illonques assemblez.* Where you see that the *Latin* Word *Communitas*, and the *French le Commune* signify the same Order of Men. *Rot. Parl.* 12. *Ed.* 2. *m.* 17. Tottle's *Stat. p.* 96.

In the Reign of *Edward* the Third, I can give you many remarkable Examples of the same Words in the Parliament Roll. In the first of this King, *Andrew de Hartford*, a principal Citizen of *London*, was *de Assensu Prælatorum, Comitum, & totius Communitatis Regni*, pardoned all Homicides; which was a Pardon by Act of Parliament. The very like Words are also used in the same Roll in the Act of Pardon granted to the City of *London.* *M.* 8. *M.* 29.

I could Instance in many more, but I shall only trouble you with one more in this King's Reign (it is so remarkable I cannot omit it) of the 34th of this King, and is to be found in the old Edition of Statutes printed in *French*; the Title begins thus, *Ceux sont les Choses, queux nostre Seigneur le Roy, Prelats, Signeurs & la Commune ount ordeines & estables.*

To conclude with the Reign of King *Richard* the Second, the like Expression is found in the Parliament Roll of the 5th of *Richard* the Second, where the Statute begins thus: *Per Commune profit du Royalme d' Angleterre eient faites per nostre Seigneur le Roy, Prelats, Seigneurs, & la Commune de le Royalme esteantes en cest Parliament.* From the Titles to which Two last Statutes, I pray observe that the Word *la Commune*, is not only used for the Commons in the same Sense as it was in the former King's Reigns; but also that these Statutes were made by the joint Assents of the King, Lords and Commons. So likewise in the same Roll are recited, *Concordiæ, sive Ordinationes factæ de Communi Assensu Regis Procerum, & Magnatum, & Communitatis Regni Angliæ*; which I give you, to shew that the Words *Communitas & le Commune*, always signify the same Thing in our Statutes and Records, *viz.* The Commons as now understood, different from your great Lords and Tenants; and if they are to be taken in this Sense after the 18th of *Edward* the First, I would be glad if you could shew me any sufficient Reason, why they should not be so understood *M.* 21.

derſtood all along before that Time, as well as in the 49th of *Henry* the Third only.

M. Tho' I grant that theſe Words you mention are to be underſtood for the *Commons*, as now taken, in many Records and Acts of Parliament, after the 18th of *Edward* the Firſt; (and therefore you need not to have taken the Pains to have gone beyond that Time) yet notwithſtanding, I think I can prove to you by very good Authorities, that the Word *Communitas*, (which I grant is the ſame Thing with *le Commune* in *French*) when put after the Words *Comites & Barones*, does not ſignify the Commons of *England* in general, but the Community of the Tenants *in Capite* alone, or at leaſt the Community of all Tenants by Military Service; and that as low as the Reign of *Edward* the IIId. But for Proof of this, I pray peruſe this Writ, which the Doctor hath given us in his Anſwer to Mr. P. *Rex Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Militibus, & omnibus aliis de Comitatu Cantiæ, Salutem. Sciatis quod cum primo die Junij, Anno Regni noſtri decimo octavo, Prælati, Comites, Barones, & cæteri Magnates de Regno noſtro concorditer, pro ſe, & pro tota Communitate ejuſdem Regni, in pleno Parliamento noſtro, nobis conceſſerunt quadraginta Solidos. de ſingulis Feodis Militum, in dicto Regno in Auxilium, ad primogenitam Filiam noſtram Maritandam, &c. Cujus quidem Auxilij levationi faciendæ, pro dictæ Communitatis aiſimento hujuſque ſuperſedimus gratioſè, &c.* By this Record it is clear, that ſuch as paid Scutage, that is, Forty Shillings for a Knight's Fee, were then the *tota Regni Communitas*, and no others: And of theſe the Tenants *in Capite* granted and paid it firſt for themſelves and Tenants; and then their Tenants in Military Service, by virtue of the King's Precept, paid it to them again for ſo many Fees as they held of them; ſo that this Tax being raiſed wholly upon Knights Fees, muſt be granted only by thoſe that held by Knights-Service.

B. G. p. 32, 33. Rot. Pat. 30. Ed. I. m. 1.

But further: That the *Communalte de Royaume*, the Community of the Kingdom, as repreſented by the Tenants *in Capite*, did ſtill ſo continue as above-mention'd, till almoſt the Middle of King *Edward* the Third's Reign, is as clearly proved by another Record of that King: *Rex dilectis & fidelibus ſuis Vicecomiti Wigorniæ, Thomæ Bottiler de Upton ſuper Sabrinam, Militi; & Thomæ Caſſy de Wych, Salutem: Sciatis quod cum in pleno Parliamento noſtro apud Weſtmonaſterium, ad diem Lunæ proximo poſt Feſtum Nativitatis Beatæ Mariæ Virginis proximo præteritum tento, Prælati, Comites, Barones, & cæteri Magnates de Regno noſtro Angliæ, &c. pro ſe, & tota Communitate ejuſdem Regni, nobis conceſſerunt quadraginta Solidos, de ſingulis Feodis Militum, in dicto Regno Angliæ, &c.* So that the whole Community of *England*, in this Record, were Military Men, ſuch as held Knights Fees, or Parts of Knights Fees, and ſuch as paid Scutage; and they were neither the ordinary Freemen or Freeholders, nor the Multitude or Rabble.

Rot. Fin. 20. Ed. III. m. 7. See it at large, B. G. p. 37.

F. I pray, Sir, give me Leave to anſwer your Arguments from theſe Records as you put them, leſt I forget what you have ſaid. In the firſt place, as to this Record of the 30th of *Edward* the Firſt, which relates to a Tax given in the 18th Year of his Reign; and recites an Aid of 40 *s.* upon every Knight's Fee through the whole Kingdom, to have been given by the Biſhops, Earls, Barons, and other *Magnates*, (or Great Men of the Kingdom) in full Parliament, for themſelves and the whole Community, to Marry the King's Daughter; and which Subſidy he had deferred to Levy till now: And therefore, becauſe this was a Tax granted only upon Knights Fees, that thoſe only who pay'd this Scutage, were then the *Communitas*, or whole Body of the Kingdom; which is no Argument at all, ſince from this we may plainly collect the clean contrary. For if none had been to pay to this Tax, but thoſe that held by Knights-Service *in Capite*, then the King would have had no need to have had it granted in Parliament; ſince by the 14th Article of King *John*'s Charter, he might have Taxed his Tenants *in Capite* for the Knighting of his Eldeſt Son, and the Marriage of his Eldeſt Daughter, without the Aſſent of the Common Council of the Kingdom: And according to your Hypotheſis, and the Authorities you have brought to prove it, theſe Tenants *in Capite* might alſo, by the like Reaſon, have made their Tenants by Knight-Service have contributed to this Tax; which yet you ſee they could not do without the Conſent of Parlia-

Parliament: And therefore this Aid (or Subsidy) being granted in Parliament, must needs extend to all the Lands in the whole Kingdom, as well those that held by Knight's-Service, as well as those that did not; for it is not here said, as in the Writ to the Sheriff of *Sussex*, *qui de nobis tenent in Capite*; and then the Words *pro se*, *& tota Communitate Regni*, cannot mean (as you would have them) *viz.* That the Lords, and Tenants *in Capite*, had granted it for themselves, and the Community of their Tenants by Military Service only, who (say you) represented the whole Community of the Kingdom; for then (as I have already observed) this needed not to have been granted in Parliament at all. For at this rate, no Tenants of those Abbeys and Monasteries, (which were a great many) who did not hold *in Capite*, would have paid any thing to this Tax; nor yet the King's Tenants, who did not hold *in Capite*, but of some Castle, or Honour: Nor lastly, any Tenants in Soccage, who were very numerous in *Kent*, as well as in other Counties; (as Mr. *Taylor* proves in his History of *Gavel-Kind.*) So that if your Tenants *in Capite*, and other Under-Tenants by Military Service, had been then the Community of the whole Kingdom; this Community had not consisted of above one Half, or at most a Third Part of the Kingdom.

But in my Sense of this Word *Communitas*, here will be no Difficulty at all; for these *Magnates*, mention'd in this Record, being taken (as I have proved they often are) for Knights of Shires; then these Words are thus to be understood; *viz.* That all the Parties mention'd in this Record, gave for themselves, and the whole Community of the Kingdom, consisting of all the Freeholders of *England*, who all contributed to the Marriage of the King's Daughter, according to their respective Estates. And tho' the Sense of this Word had been otherwise in this place, yet it would not have contradicted my Sense of the Word *Communitas*, which I do not say always signifies the *Commons*, only when it comes immediately after the Words *Comites & Barones*; as it does not in this Record you have now cited.

M. But pray tell me how this could be; since the Record says expressly, that this Aid was to be Raised by 40 *s.* upon every Knight's Fee; which could only extend to Tenants by Knights-Service: Nor could this Word *Communitas* here signify the *Commons*, as now understood; since the Citizens and Burgesses are not at all mention'd, who (you know) do at this Day make up the greatest Part of the Representatives of the Commons of *England*.

F. This proceeds from your not knowing, or else not considering, the Ancient Manner of reckoning Estates, (and consequently of Taxing by Knights Fees) not only Lands held by Military, but Soccage-Tenure also; as appears by those Writs of the 24th and 26th of *Henry* the Third, as they are still upon the Close-Rolls; being both almost the same, word for word, which I gave you at our last Meeting; yet since you may have forgot them, pray read them again. *Rex Vicecomiti Northampton. Salutem: Præcipimus tibi, quod per totam Ballivam tuam, in singulis bonis Villis, & similiter in pleno Comitatu tuo, clamari facies, Quod omnes illi de Comitatu tuo, qui tenent Feodum Militis integrum, vel etiam minus, quam Feodum integrum, dum tamen de Tenemento suo, tam Militari quam de Soccagio, possint sustentari; & Milites non sunt, sicut Tenementa sua diligunt citra Festum omnium Sanctorum, Anno Regni Nostr.* XXV. *Arma capiant, & se Milites fieri faciant.*

24. *H.* III. *m.* 8. *dorso.* 26. *H.* III. *Part* 1. *m.* 6. *dorso.* *Tit. de Militibus faciendis.*

Where you may note, that all Men, who held the Value of a Knight's Fee, either by Military, or Soccage-Tenure, were liable to be made Knights, provided they could maintain themselves of their Estates; which could never have been, had not the Custom of Reckoning and Taxing Estates of all sorts, as well by Knights Service, as otherwise, according to the Value of so many Knights Fees, (that is, at 20 *l. per Annum*) been then commonly used. But as for your next Objection, that the Citizens and Burgesses are not mention'd in this Record, and so could not be comprehended under the Words *Communitas Regni*; this proves no more than that which will easily be granted you; that this Word *Communitas*, used in your Record, is there to be understood restrictively, and according to the Subject-Matter; *viz.* the *Community* of Freeholders, or Land-Holders of the whole Kingdom only; since this Tax being wholly upon Lands, the Commons of Cities and Boroughs, then called *Communitates Civitatum, & Burgorum*, whose Estates lay in Money or Goods, could not be Taxed by Knights

Fees; nor do I doubt but that if the Records of that Paliament of the 18th of *Edward* I. were now extant (which are loſt) it would appear, that they alſo contributed to this Tax, according to their Eſtates, as they did in the 34th Year of this King, to make the King's Eldeſt Son a Knight. And as for your other Record of the 20th of *Edward* the Third, ſince it is but the ſame in Effect with this of the 30th of *Edward* the Firſt, the ſame Anſwer will ſerve for both; only I cannot but obſerve, that whereas you have often aſſerted that this Word *Communitas*, did only ſignify the Community of Tenants *in Capite*, now you fall a Peg lower, and it muſt at laſt take in the whole Community of Tenants by Knights Service, whether *in Capite*, or not, who muſt certainly grant this Tax, by their Repreſentatives, the Knights of Shires, who were preſent at this Parliament, as appears by the Writs of Summons; now if you grant (as indeed you muſt) that the Word *Communitas* now ſignifies ſuch inferior Military Tenants, as then ſerved for Knights of Shires, why muſt not the ſame Word ſignify the like Perſons before the 18th of *Edward* the Firſt.

M. Well then, however, you grant that this Word *Communitas* does not always ſignify all the Commons of *England*, as you ſuppoſed; but give me leave to urge further, that it muſt mean the Community of the Tenants in Military Service only: Pray ſee this very Record of the 34th of *Edward* I. which Mr. *P.* has given at large in his *Appendix*; which being long, I ſhall trouble you with no more than what makes to our preſent Purpoſe, *viz.* That the King intending to make his Son, Prince *Edward*, a Knight, Summoned the Archbiſhops, Biſhops, Abbots, Priors, Earls, Barons, and other great Men of the whole Kingdom, to appoint what Aid they would grant the King towards it; and then it follows thus, "That the Prelates, Earls, Barons, and others, as alſo the "Knights of Shires, being met, treating together with Deliberation upon this "Matter, conſidering that an Aid was due to make his Son a Knight, beſides the Burthen that lay upon the King, by reaſon of the *Scotch* War, at "length they unanimouſly *Domino Regni conceſſerunt, pro ſe & totâ Communitate Regni triceſſimam partem omnium Bonorum ſuorum temporalium mobilium*, for making his Son a Knight, and towards his Expences of his War in *Scotland*. And then the *Cives & Burgenſes Civitatum, ac Burgorum, ac cæteri de Dominicis Regis Congregati*, treating about the Premiſes, and conſidering the Burthens lying upon the King (not mentioning any Aid for making his Son Knight, as not holding of the King by Knights-Fee, or Service, and therefore none of the Community of the Kingdom) *Domino Regi unanimiter ob cauſas ſupra dictas conceſſerunt Viceſimam partem bonorum ſuorum mobilium*. Here the Prelates, Earls, Barons, and great Men, with the Knights of Shires, conſulted together and gave for themſelves, and the Community of the Kingdom, a Thirtieth Part of their Goods, and the Citizens, Burgeſſes, and Tenants of the King's *Demeſnes* (which were likewiſe none of the Community of the Kingdom) gave a Twentieth Part; for if they had been of the Community, they had paid a Thirtieth Part as well as the reſt; and therefore 'tis moſt certain that even at this Time, *viz.* the 34th of *Edward* I. they were not taken to be part of the *Community* of the Kingdom, and that the Tenants *in Capite*, Serjeanty, or at leaſt the Military Men, and Tenants in Military Service were only ſuch. This I have cited, to ſhew you that Anciently the Citizens and Burgeſſes were not then reckoned as Part of the *Community* of the Kingdom, and therefore the Words *Communitas*, and *le Commune*, though put after, and diſtinct from *Comites* and *Barones*, did not then include all the *Commons* of *England*, as you have very confidently aſſerted.

Pag. 172, 173.

F. As to this laſt Record you have cited, I need give you no other Anſwer to it, than a like Writ of the 35*th* of this King, which the *Doctor* himſelf hath alſo given us in his *Gloſſary*; which I ſhall here read you at Large, together with his Learned Comment upon it; it is for the Collecting of this Twentieth and Thirtieth Part granted in the Thirty Fourth you have now mentioned; the Writ runs thus, *Militibus, liberis hominibus, & toti Communitati Comitatus* Middleſex *tum infra Libertates, quam extra, ſalutem: cum Archiepiſcopi, Epiſcopi, Abbates, Priores, Comites, Barones, Milites, Liberi Homines, ac Communitates Comitatuum Regni noſtri Triceſimam omnium Bonorum ſuorum temporalium mobilium, Civeſque & Burgenſes, ac Communitates omnium Civitatum & Burgorum ejuſdem Regni, necnon Tenentes de Dominicis noſtris Viceſimum Bonorum ſuorum mobilium, curialiter conceſſerunt, & gratantur*, &c.

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And

And leſt we ſhould happen to miſtake the Meaning of theſe Words, the Doctor himſelf has furniſh'd us with this Learned Comment upon them, as follows in the ſame Place. "It is ſaid in this Record, that the Archbiſhops, B. G. p. 34. "Biſhops, Earls, Barons, Abbots, Priors, Knights and Freemen, and Com- "munities of Counties, gave a Thirtieth Part of their Goods, as if they had "been all Members, and ſat in this Parliament. And ſo it is ſaid of the Cities "and Burghs, that the Citizens, Burgeſſes, and the Communities of the Cities "and Burghs gave a Twentieth Part of their Moveables, as if they had been all "there. But theſe Words ſignify no more, than that the Knights and Freemen "gave by their Repreſentatives, and that the Communities of Counties, Clauſ. 34 Ed. I. "and the Citizens and Burgeſſes, and Communities of Cities and Burghs, "gave by their Repreſentatives, as is moſt clear from the Writ of "Expences for the Knights of *Lincolnſhire*, and ſo conſequently for the reſt. Now I deſire you would tell me, whether there can be a plainer Record againſt the Doctor's Opinion than this; for in the firſt place, who were theſe Knights, Freemen, and Commons, who granted this 26th and 30th Part of their Moveables in the 34th Year of this King; but the Knights, Citizens and Burgeſſes, the Lawful Repreſentatives of the whole Kingdom in General, as well thoſe who held *in Capite*, or elſe by inferior Military Service, as thoſe that held by any other Tenure? Or who were theſe Repreſentatives, but Men choſen out of all Sorts, as well thoſe that held by Knights Service, as thoſe that did not; unleſs you can prove (as you have not done hitherto) that all the Cities and Boroughs in *England* held of the King *in Capite*; and that none but Tenants *in Capite*, or Military Service at leaſt, were choſen either for Counties or Cities: And though I find your Doctor has an utter Averſion to the Word Commons, and therefore will needs tranſlate the Word *Communitates*, by Communities, and not Commons; yet if you were to render theſe Words, *the Commons of the Counties, Cities and Boroughs*, into our Law-*Latin*, I deſire to know what other Words you could make uſe of; but theſe in this Record, *viz. Communitates Comitatuum, Civitatum & Burgorum?* So that to conclude, if in the 28th, 34th and 35th of *Edward* the Firſt, all the Commons gave by the ſame Repreſentatives as they do now, I can ſee no Reaſon why they might not do ſo too, Thirty or Forty (nay Threeſcore) Years before that Time; and pray take Notice alſo, that here the Tenants in Ancient *Demeſne* gave likewiſe by themſelves, and could not be charged by the Knights of Shires. And therefore, as Mr. *Lambard* in his *Archeon* very well obſerves, this Preſcription of not being chargeable with the reſt of the County, muſt be very Ancient, ſince there was no Land at that Time reckon'd as Ancient *Demeſne*, which had not belong'd to the Crown before the making of *Doomſday*-Book. And if granting an Aid to the King ſeparately from the reſt of the Kingdom, were ſufficient to conſtitute the Grantors a diſtinct Eſtate, then the Tenants in Ancient *Demeſne* were no Part of the Commons of the Kingdom by the ſame Rule.

M. I muſt confeſs, what you have now ſaid concerning the conſtant Uſe of the Words *Communitas*, and *le Commune* (coming after *Comites* and *Barones*) to expreſs the Commons in Parliament in our Statutes and Records, would weigh much with me, had I not good Reaſon to believe there were no ſuch Thing as Commons in Parliament, in the Senſe now taken, before the 49th of *Henry* the Third; and from which Time I ſuppoſe it was diſcontinued till the 18th of *Edward* the Firſt; for which I can give you very good Proofs: But in the mean time pray ſhew me by any Record, or Statute, that there were any Knights, Citizens and Burgeſſes Summoned to Parliament till the Times I allow. For in the firſt Place, you cannot ſhew me any Mention of Commons in the Plural Number, in any old Statute before *Edward* the Firſt's Time; and as for the Words *Communitas* and *le Commune*, which I grant was often uſed to expreſs the Commons after that Time, your ſelf own they are equivocal; and therefore when put after the Earls and Barons in the Inſtances you have given, may ſignify the Community of the ſmaller Tenants *in Capite*, which were the only Repreſentatives of the Commons that appeared in Parliament in thoſe Days; and I am the more inclined to be of this Opinion, becauſe I have ſearched the old Statutes very exactly, and cannot find any Mention of the Word *Commons* in the *Plural*, much leſs of Knights, Citizens, or Burgeſſes, till the Statute of the 34th of *Edward* the Firſt, *de Tallagio non concedendo*,

do, (made in the 34th of *Edward* I.) wherein I grant they are expreſly mentioned; And as for Writs of Summons, you can produce none till the 23d of this King, to Summon them to Parliament; though I ſhall ſhew by and by, that the Doctor has found out one of the 18th of *Edward* the Firſt; whereby he proves they were then Summoned, after about Twenty ſix Years Diſcontinuance: Therefore, pray ſhew me if you can by any ſufficient Proof, that they were there in *Henry* the Third's Reign, or in *Edward* the Firſt's, till the 18th.

F. I confeſs, your Doctor has not only exceeded all other Men, but himſelf too in this rare Diſcovery: For whereas in his Firſt Edition of his Anſwer to Mr. *Petyt*'s Book, he was content to follow Sir *William Dugdale*, and make the Commons to have been Firſt Summoned to Parliament in the 49th of *Henry* the Third; and to have commenced with *Montford*'s Rebellion, and ſo to have ſtill continued on. Now the Doctor, upon Second Thoughts, in his Edition in *Folio*, will have them never to be Summoned any more than that once; becauſe, forſooth, he cannot find them mentioned in ſuch expreſs Words, as that he cannot evade them, by ſaying the Senſe is Equivocal. And if the Commons not being expreſly mentioned in our Statutes, were a ſufficient Reaſon to prove them not to have been there; were the Writs of Summons loſt, as well after as they are before the 23d of *Edward* the Firſt; you might as well have faced us down, that there were none in all that Time, till the Statute *de Tallagio non concedendo*, you now mentioned. And for Proof of this, pray ſee the Statute called *Articuli ſuper Chartas*, made in the 28th of this King; which is ſaid to be made and granted by the King, at the Requeſt of the Prelates, Earls, and Barons, who are only mentioned in this Statute; and yet certainly the Commons were then at this Parliament, as appears by the Writs of Summons and Expences but now mentioned; and ſure their Aſſents were given to it, as well as the Biſhops, and Lords. I could ſhew you the like in many other Statutes of this King; nor are the Words *Communitas*, or Commonalty ever mentioned above Twice in all the Statutes of this King's Reign, *viz.* in that of *Weſtminſter* the Firſt, and that againſt bearing of Arms: neither is the Word *Commons* to be found above once or twice in all the Statutes of *Edward* the Second. For in the Statutes made at *Lincoln*, in the 9th of this King, 'tis ſaid to be done by the King, the Counts, Barons, and other *Grands* of the Kingdom. Now if theſe general Words did comprehend the Commons in thoſe Times, you grant they were conſtantly Summoned to Parliament: I deſire you would give me any good Reaſon why the ſame general Words may not as well comprehend them long before? And if the bare Omiſſion of the diſtinct Orders or States of Men that gave their Aſſents to the making of any Statute, and the different penning of Acts of Parliament, were a ſufficient Reaſon to prove they had no Hand in it; I doubt two Parts in Three of the old Statutes of *Henry* the Third, and *Edward* the Firſt, would have been made without the Conſents, either of the Biſhops or Lords; ſince in moſt of them there is no mention made of either: And that what I ſay is true, pray at your leiſure peruſe theſe Statutes following, *viz.* *de Diſtrictione Scacarij* of the 51ſt of *Henry* the Third, with other Statutes made in the latter End of that King's Reign, as alſo that of *Aſſon Burnel* made in the 11th of *Edward* the Firſt; that of *Winchester* made in the 13th of this King; that of *Merchants* in the ſame Year: As alſo thoſe of *Circumſpecte agatis*, and *Quo Warranto*; and ſee if you can find any mention, either of the Lords or Commons in them.

But to come to direct Proofs: Tho' I grant the Words Knights, Citizens, and Burgeſſes were not expreſly mentioned in our old Statutes; yet I ſhall prove to you by other Words of a much more Comprehenſive Signification, that they appeared in Parliament in the very Beginning of *Henry* the Third's Reign. For this we need go no farther than the Old Manuſcripts, as well as Printed Copies of *Magna Charta*; which was firſt Granted in the Second Year, and again confirmed in the 9th of *Henry* the Third, both which conclude thus: *Pro hac autem Donatione & Conceſſione, Archiepiſcopi, Epiſcopi, Abbates, Priores, Comites, Barones, Milites, libere Tenentes, & omnes de Regno noſtro dederunt quintam decimam partem omnium mobilium ſuorum.* Now can any thing be more expreſs than this Clauſe, *viz.* That the Archbiſhops, Biſhops,

Abbots, Priors, Earls, Barons, for themſelves and the inferior Orders, *viz.* the Knights and Freeholders, and all others of the Kingdom by their Lawful Repreſentatives, gave this 15th of their Moveables, at both thoſe Parliaments, in which this Charter was firſt made, and afterwards confirmed.

M. I confeſs this Authority looks very plauſible at firſt; but if it be ſtrictly looked into, I believe it will prove nothing at all: for as to your Interpretation of theſe Words, I do not allow it, for Reaſons I ſhall ſhew you by and by. But in the firſt place give me leave to diſpute the Antiquity of this Charter, which I do not take to be ſo Ancient as you make it; for tho' I grant there was ſuch a Charter made in the 2d, and again confirmed in the 9th of *Henry* the Third; yet you have already had my Thoughts of this Charter, which you ſuppoſe to be *Henry* the Third's, *viz.* that this which we now have is not properly his, but his Son *Edward* the Firſt's; ſince it concludes thus: *His teſtibus Bonifacio Cantuarienſis Archiepiſcopo, E. Londinenſi Epiſcopo,* &c. *Anno Regni noſtri (ſcil.* Henrici 3.) *nono*; whereas this *Boniface* here mentioned, was not Archbiſhop of *Canterbury* before the 27 *Henry* the Third, nor was there any one whoſe Name began with *E.* Biſhop of *London*, during the Time that *Boniface* held the See of *Canterbury*.

F. I am very glad you have made theſe Objections againſt the Validity of this Charter: For if I can prove to you, that what you have now urged from your Friend the Doctor, is a meer Cavil againſt the Charter it ſelf, I think you have Reaſon to be my Convert. In the firſt place, I therefore freely grant that the Original of this Charter is not to be found among the Statute Rolls in the *Tower*, where there is nothing left of it on Record, except a Confirmation of it by a Charter of *Inſpeximus* of *Edward* the Firſt, (the Concluſion of which is as you have now given) and I think there cannot be a greater Proof of the careleſs keeping, or Embezzlement of the Ancient Statutes and Records of the Kingdom, than the Loſs of this great Charter, which certainly muſt have been enrolled at the Time when it was made; as well as every common Grant made by the King to ordinary Perſons of Markets and Fairs; ſince we find Copies of it ſtill Extant in the Ancient Annals of divers Monaſteries, where the Originals of it were formerly kept; as in particular, in the Annals of the Abbey of *Burton*, publiſhed in the firſt Volume of Ancient *Engliſh* Writers, lately Printed at *Oxford*, which fully anſwers your Objection; for inſtead of *Boniface*, it is there Witneſſed by *S. Archepiſ. Cant.* i.e. *Stephen Langton*, who was then Archbiſhop of *Canterbury* near 20 Years before *Boniface*: there is alſo an, *&c.* after the Name of this Archbiſhop. And the ſame Charter is likewiſe recited Word for Word with the former, and hath the ſame Concluſion concerning the granting of this 15th, by all the Parties above-mentioned, in the Chronicle of *Walter Hemingford*, publiſhed by the Learned Dr. *Gale*, in his 2d Volume of *Engliſh* Hiſtorians, only it hath no Witneſſes Names at the end, but the King himſelf, *Teſte meipſo.* And farther, both agree in all Things material with four Ancient Manuſcript Copies of this Charter, of the 2d of *Henry* the Third, when he was in Minority, one of which is in the *Cottonian* Library; a 2d was lately in Poſſeſſion of *Sam. Baldwin*, Serjeant at Law; a Third is in the Hands of *John Cooke, Eſq*; chief Prothonotary of the Court of *Common Pleas*; and a 4th is at this preſent with Mr. *Petyt* of the *Inner-Temple*, which I my ſelf have ſeen.

Annals Burt. pag. 271. *& deind.*

Printed at Oxon, 1687.

But to put this out of all doubt, there is ſtill Extant a fair Original of this Charter of Confirmation of the 9th of *Henry* the Third, (when he was of full Age) under the Great Seal of this King (which is ſuppoſed to have belonged to *Battail* Abbey) and is now to be ſeen in the Hands of Sir *Nathaniel Powel*, Bencher of the *Inner-Temple*, who is ſo civil as to communicate it to all who have the Curioſity to ſee ſo great a Rarity; ſo that, tho' it is not to be denied, but that the Charter publiſhed by Sir *Edward Cooke* in his 2d Inſtitutes, is properly the Charter of Confirmation of *Edward* the Firſt; ſince *Boniface* was at that Time Archbiſhop of *Canterbury*, and *Fulk* Biſhop of *London*, (*E.* being by miſtake put for F.) yet I think no Man has any Cauſe to doubt whether that Clauſe we diſpute about, be not in the Copies of this Charter, as well as in this of *Edward* the Firſt.

M. Well,

M. Well, admitting this Charter to be as ancient as you pleaſe, yet let me tell you, if your Senſe be, that the Words at the End of this Charter, *viz.* *omnes de Regno*, thoſe who gave or granted this Subſidy, were Members of that Parliament; if you will underſtand it ſo, and according to the literal Meaning of the Words, then *omnes de Regno*, as well thoſe that had Eſtates in Land, as thoſe that had not, all *Copy-holders*, all *Tradeſmen*, all *Bondmen* and *Villains* (of which there were great Store in thoſe Days) and all Servants were there preſent as Members of Parliament. And ſo then I would willingly underſtand where all theſe People ſhould meet, how their Councils ſhould be managed, and how it is poſſible in ſuch Meetings (if any ſuch there can be) to prevent the greateſt Confuſion imaginable. The Meaning then of the Words muſt be, that the Archbiſhops, Biſhops, Abbots, Earls, Barons, Knights, Free Tenants, and all of the Kingdom, or all the King's Subjects, *Dederunt*, that is, paid a Fifteenth Part of their Moveables to the King, for his granting theſe Charters; not that they themſelves gave or granted this Subſidy. And 'tis reaſonable to conclude, that all the King's Subjects paid the Fifteenth Part; becauſe one way or other, little or much, they enjoyed the Benefit of them. I take this to be the Genuine Senſe of the Words, but *Mat. Paris*, whom you now quoted, makes it very apparent, who were the conſtituent Parts of this Parliament; for if you pleaſe to obſerve, the Men to whom the Chief Juſtice propoſed this Fifteenth, and thoſe who conſulted about the King's Demands, and thoſe that returned an Anſwer to them; and alſo granted the Fifteenth Part of the Moveables, as well of the Eccleſiaſticks, as Laicks of the whole Kingdom, were only the Archbiſhops, Biſhops, Earls, Barons, Abbots, Priors; and therefore they were the only conſtituent Parts of this Parliament, as they were alſo of the Parliament, or great Council held at *Merton*, in the Twentieth Year of this King's Reign; Whither ſays *Mat. Paris*, *Conſummato cum gaudio Nuptiali convivio Rex recedens a Londonijs venit Meretonam, ut ibi revocati Magnates una cum Rege de Regni Negotijs contractarent.*

B. A. P. P. 125, 126.

F. I think I can as eaſily anſwer this ſmall Objection againſt our meaning of theſe Words at the End of this Charter. Do I affirm that theſe Words are to be taken literally, or the contrary? Therefore you do ill to put a Senſe upon me, which I do not allow of. But pray tell who ever was ſo mad as to believe that theſe Words are to be underſtood literally? Or that all thoſe Perſons who you here give us a Bed-Roll of, could all appear in Parliament in Perſon, or had all Votes at the Election of Parliament Men; and yet for all that, this Cauſe is true in a legal, tho' not in a literal Senſe, that all the Freemen of the Kingdom granted this 15th, *viz.* That the Prelates and Temporal Lords in their proper Perſons, and all the reſt of the Kingdom by their reſpective Repreſentatives, granted this Fifteenth. I hope it is a good Rule in your Civil, as well as our Common Law, that he who gives, or grants any Thing by his ſufficient *Proxy* or *Repreſentative*, is ſaid to perform it by himſelf; and in this Senſe, all the Men in the Kingdom gave, or granted a Fifteenth for the Confirmation of this Charter; and ſo at this Day, it may be ſaid in a legal Senſe, that all the Men of the Kingdom do join in granting the King a Tax by their Repreſentatives in Parliament, tho' none but ſuch as are Freeholders of 40 *s.* a Year, can have Votes at the Election of Knights of the Shire, nor any but the Aldermen of divers Cities and Towns, and the Freemen of Corporations, and the Scot and Lot Men of Boroughs, who have any Votes at the Election of Citizens or Burgeſſes.

And that your Doctor himſelf, tho' he hath miſled you in the Senſe of this Word *Dederunt*, yet can grant this to be a reaſonable Interpretation of this Clauſe, when he is in a good Humour; pray remember his Comment upon the Record of the 34th of *Edward* the Firſt, which I gave you but now; wherein, after the *Barones* it follows, that *Milites Liberi Homines & Communitates Commitatuum dederunt*, granted a 30th Part of their Moveables, and the *Comunitates Civitatum & Burgorum* a 20th; "Whereupon he tells you, "theſe Words are ſo expreſſed as if they had been there all in Perſon; but "theſe Words ſignify no more, than that the Knights and Freemen gave by "their Repreſentatives, and that the Communities of Counties, and theſe Citizens

" tizens and Boroughs gave by their Repreſentatives". And why theſe *Milites Liberi Homines, & omnes de Regno*, might not do it as well in the ſame Senſe, in the beginning of the Reign of *Henry* the Third, when this Charter was granted and confirmed, I ſhould be glad if you could give me a ſufficient Reaſon. So that I ſhall refer it to your own Ingenuity, to conſider, when the Charter ſays expreſly, that all the Perſons therein mentioned gave a Fifteenth, whether it be not a manifeſt wreſting of the *Grammatical* Signification of this Word *Dederunt*, to render it they paid; for at this rate a Man may make Words ſignify juſt what he pleaſes. But our ancient *Engliſh* Hiſtorians are the beſt Judges in this Caſe. For the Annals of *Waverly-Abbey* publiſhed in the ſame Volume I laſt mentioned, under the Year 1225, having given us a ſhort Account of the granting theſe Charters, 9th of *Henry* the Third, recite the Concluſion of the great Charter in the ſame Words as they are in the Charter it ſelf; only before *Dederunt* there is alſo added the Word *Conceſſerunt*, which ſhews that the Author of this Part of thoſe Annals, who might very well write at the ſame Time, or preſently after the Charter was granted, by his Paraphraſe of *Conceſſerunt*, ſeemed to intend to prevent any ſuch Miſtake in the Signification of the Word *Dederunt*. And that this was the conſtant Opinion of all Hiſtorians and Antiquaries to this Day, I will ſhew you from *Henry de Knighton*, who lived within 100 Years after this Charter was granted, and in his Hiſtory hath this Paſſage in this Year, *viz.* 9th of *Henry* the Third; *Poſt hæc Rex Henricus conceſſit Magnatibus terræ duas Chartas unam de Foreſta, & aliam de Libertatibus ob quam cauſam Communes Regni conceſſerunt* 15 *Partem mobilium, & in mobilium.* From whence it appears plainly that at the Time when this Author writ, it was generally believed that the Commons (called *Milites & Liberi Tenentes* in this Charter) granted this 15th of all their Goods. *Vid. Scriptores* Col. 2429.

I ſhall conclude with a modern Authority of a Perſon, who you will own to be a Man of great Judgment and Learning, *viz.* Sir *Henry Spelman*, who in his Diſcourſe of *Magna Charta*, inſerted in his Gloſſary, hath this remarkable Paſſage, *Demum Anno* 9. *Regis Henrici* concedente *Clero, & Populo cum Magnatibus Quintodecimam partem omnium rerum mobilium totius Regni Angliæ, renovantur Chartæ Libertatum, prout Sub Rege Johanne prius erunt conditæ*, where it is plain, that by *Populus* he meant the Commons as diſtinct from the Lords and Clergy. As for what you ſay farther, whereby you would ſet up the Authority of *Mat. Paris* againſt the expreſs Words of the Charter it ſelf, I ſuppoſe you or the Doctor from whom you borrowed this Notion, are the firſt who interpret ancient Statutes and Records, according to the general Words of Hiſtorians: Whereas I always thought till now, that the Senſe of the Hiſtorians ought to have been underſtood by Records, and not *vice verſa*; ſince the former differ one from another in the Manner of Expreſſion of the conſtituent Parts of our great Councils or Parliament, and for brevity ſake, expreſs themſelves in as few Words as they can. *Pag.* 376.

But notwithſtanding the Conciſeneſs of thoſe Expreſſions which we find in *Mat. Paris*, and other ancient Authors; yet I think even in this Place now cited, there are Words enough to prove there were other Lay-Perſons at this Council, beſides Earls and Barons there mentioned; or elſe, what is the meaning of theſe Words *aliis Univerſis* immediately after *Baronibus*, to whom *Hubert de Burgh* propoſed the King's Demands, and who alſo gave their Anſwer to them? And if theſe Gentlemen were not Barons, as certainly they were not (or elſe to what Purpoſe was this Diſtinction made) then they were meer Commoners, and ſo we find there were Commons in Parliament, from the Authority of *Mat. Paris*, that before the 49th of *Henry* the Third; which is likewiſe proved by the Statute of *Merton* (which I have lately cited) in the Concluſion of its Preface, which runs thus, *Ita proviſum fuit, & conceſſum tam à prediktis Archiepiſcopis, Epiſcopis, Comitibus, Baronibus, quam ab ipſo Rege, & Alijs.* Now pray tell me who theſe *& Alij* were, if not the Commons, for you did not anſwer this Queſtion when I laſt mentioned this Statute.

M. I ſhall tell you my Thoughts of theſe *Alij* by and by, when I come to theſe Words *omnes de Regno*; but in the mean Time, give me leave to give you the Doctor's Interpretation of this Word *Milites* put here after *Barones*,

Barones, which *Milites* were not Knights of Shires (as you ſuppoſe) but Tenants *in Capite* by Military Service; as appears by the Aſſize or Statute of
Fol. 445. *Richard* the Firſt, quoted by *R. Hovenden* in his Hiſtory, which is ſaid to have been made, *per Aſſenſum & Conſilium Archiepiſcoporum, & Epiſcoporum, Abbatum, Comitum & Baronum, & Militum.* Now theſe *Milites* were often ſtiled *Barons*, and the *Barons*, *Milites*. *Nam Miles* (ſaith Sir *Henry Spelman*) *quem Baronem vocabant non à Militari Cingulo (quo Equites creabantur) ſed à Militari Feodo, quo alias poſſeſſor & liberè Tenens, nuncupatus eſt, nomen ſumpſit*, that is, ſuch as had Lands given them for, or ſuch as held Lands by Military Service, and did Homage and Fealty to thoſe of whom they held their Lands; and in this Senſe, *Mat. Paris* calls all the Temporal Nobility *Milites*, when in the Parliament 37 of *Henry* the Third, he ſays, *à Militibus Conceſſum eſt Scutagium illo Anno ad Scutum tres Marcæ.*

F. I think your Interpretation of the Word *Milites* is forced, and quite contrary to the true meaning of this Charter: Now pray ſhew me the Conſequence, that becauſe the Barons were anciently ſtiled *Milites*, that therefore your Tenants *in Capite* were then ſtiled *Barones* too; which is not true, and quite contrary to this Charter it ſelf, where theſe *Milites* (whoever they were) are put after the *Barones*, as a diſtinct Order of Men from them; whereas if the Terms had been then reciprocal, the Words *Barones*, or *Milites* (chuſe which you pleaſe) would have comprehended both; but indeed this Title of *Miles* was then of a much larger Signification, and took in all Knights of whatſoever Tenancy, whether by Military Service or Soccage; as appears by thoſe Writs of the 25th and 26th of *Henry* the Third, which I have already cited; whereby thoſe that held Eſtates ſufficient to maintain themſelves *de Tenemento ſuo tam militari, quam Soccagio*, were alike Summoned in to take the Order of Knighthood; and when Knighted, were certainly as good *Milites* as the beſt of your Tenants *in Capite*; and ſo might very well be reckon'd amongſt the *Milites* in this Charter. But pray tell me what ſay you to theſe following Words, *Liberi Tenentes & omnes de Regno?*

M. Theſe will likewiſe bear a like Interpretation; for by theſe *liberi Tenentes*, that immediately follow in this Charter after *Milites*, I ſuppoſe were meant
B. C. p. 64. no other than the leſſer Tenants *in Capite*, who having ſcanty Knights Fees, or part of Knights Fees, deſired not Knighthood, or had compounded, or fined for it, that they might not be made Knights, and who not being actual Knights, are here called Free Tenants or Freeholders, as I have already told you at our laſt Meeting.

F. Pray give me leave to anſwer this Interpretation of the Word *Liberi Tenentes*, before we proceed farther. You may remember that I have anſwered all your Authorities, whereby you would prove that the Tenants *in Capite* were at this Time the only proper Freeholders of the Kingdom; ſince I then proved to you from Sir *Henry Spelman*'s *Gloſſary*, that any Freeman having an Eſtate of Inheritance, was as much the *Liberi Tenens*, a Freeholder, as the beſt Tenant *in Capite* in *England*. Indeed if the Words had been *Milites & liberi Tenentes, qui de Rege tenuerunt in Capite*, you had ſaid ſomewhat; but otherwiſe it is all meer Suppoſition, without any Ground. But pray go on to the laſt Words in this Charter, *& omnes de Regno noſtro*; what can they mean, but that all the Freemen of the Kingdom gave this Fifteenth by their Lawful Repreſentatives?

M. If you do not like our Senſe of theſe Words, *Milites* and *Liberi Tenentes*; I cannot help it, nor ſhall I diſpute them longer with you; but as for this
Ibid. p. 65. laſt Clauſe in the Charter, *& omnes de Regno*, it only means, all thoſe who were Tenants *in Capite* in general in the ſame Senſe; as when our Ancient Hiſtorians mention *Regnum & Sacerdotium*, by *Regnum* is to be underſtood both the Temporal and Spiritual Barons, great and ſmall; the King's Juſtices, or any other that exerciſed any ſhare or Miniſterial part of the Government; as perhaps all thoſe did one way or other, by coming to our Great Councils or Parliaments, *&c.* all which is evident from the Words of the *Quadri-partite* Hiſtory, concerning *Thomas Becket*, thus, *Rex apud Clarendum, Regnum convocat univerſum. Quo cum veniſſent Præſules, & Proceres*, &c. *i. e.* the whole Baronage called together by the King's Writ, or a full Meeting of the Spi-

ritual

ritual and Temporal Barons, both great and ſmall. I pray alſo remember that Paſſage you your ſelf made uſe of but now, out of *Matt. Paris*, whereby you would prove that the Common Council of the whole Kingdom was diſtinct from that of the Tenants *in Capite*; becauſe that after the *Curia* held at *Chriſtmas*, the King immediately iſſued out his Writs, commanding *omnibus ad Regnum ſpectantibus*, to appear at *London*; and yet you ſee there are no more mentioned to be Summoned than the Archbiſhops, Biſhops, Abbots, Priors, Earls and Barons. So that we may hence learn the true Meaning of theſe Words, *omnes de Regno ſpectantes*, in *Matt. Paris*, the *Regnum*, or Government, the *Communitas Regni*, the *totalis Regni univerſitas*, the *infinita nobilium multitudo*; and alſo gives us the Meaning of thoſe Words, *omnes alii de Regno*, in the Cloſe Roll of the 19th of *Henry* the Third, to the Sheriff of *Somerſetſhire*, *Scias quod Comites & Barones, & omnes alij de toto Regno noſtro*, &c. *Conceſſerunt*, &c. Which are further explained by a Writ in the ſame Roll about the ſame Buſineſs, directed to the Sheriff of *Suſſex* (which you have likewiſe cited) beginning thus, *Sciatis quod Archiepiſcopi, Epiſcopi, Abbates, Priores, Comites, Barones, & omnes Alij de Regno noſtro Angliæ, qui de nobis Tenent* in Capite *nobis conceſſerunt*, &c. Here the *omnes alij de Regno*, were the *omnes qui de nobis Tenent* in Capite; which were then all the *Regnum*, or *Communitas Regni*. So likewiſe it may be farther proved from a Record of the 48th of *Henry* the Third, *Rex omnibus*, &c. *cum venerabiles Patres*, G. E. *Eborum Archiepiſcopus*, &c. *& alij Prælati, Magnates, Milites, liberi Tenentes, & omnes alij de Regno nobis nuper in Articulo neceſſitatis ſervitium fecerunt, & ſubſidium*, &c. And I may alſo put you in mind of the Writ I cited but now, directed *Archiepiſcopis, Epiſcopis*, &c. *Comitibus, Baronibus, Militibus, & omnibus aliis de Comitatu Kanciæ*, &c. for the Levying of Forty Shillings upon every Knights Fee in that County. Now this Writ could not be directed to all the Men in *Kent*, but to all ſuch as paid *Scutage*; for not a Fortieth Part of them were Tenants *in Capite*, or Military Service. So that theſe *omnes alij de Regno*, and *omnes alij Comitatus*, were the ſame one with the other, and otherwiſe it could not be: For by *omnes de Regno*, or *omnes alij de Regno*, the Inhabitants in general could not be underſtood, for they never were Summoned, no not the Hundredth Part of them, to meet in Great Councils; for 'twas impoſſible they ſhould; and perhaps not above a Fourth Part of the Kingdom paid to this Fifteenth, if we conſider how many Servants, Villains, Bondmen, and many ſuch People there were then in the Nation that paid nothing.

B. G. p. 65.

M. 6. Dor.

Ibid. M. 8.

Rot. Pat. N. 5.

F. You have taken a great deal of Pains to perplex and darken Words in themſelves very clear and perſpicuous; for methinks it is a ſtrange piece of Confidence in your Doctor, when the Charter ſays expreſsly, That *Omnes de Regno*, all the Freemen of the Kingdom gave this 15th, to reſtrain this Act only to the Tenants *in Capite*, who were but a few in Compariſon to the whole Kingdom; this is indeed to make Words ſignify any Thing he fancies.

But to anſwer your Authorities, which are founded all upon falſe Suppoſitions, without any Proof. As to your Authority from the *Quadrilogus* Hiſtory of *Thomas Becket*; it is true, that the *Præſules* and *Proceres* are there called *Regnum*, the Kingdom; but I have already proved at our laſt Meeting, that this Word *Proceres* was of ſo comprehenſive a Signification, that it took in all the Principal Men of the Kingdom, as well thoſe that were Lords, as thoſe that were not; ſo that the chief Citizens and Magiſtrates of our Cities and great Towns, are often ſtiled *Proceres & Magnates Civitatum*, in our Ancient Hiſtorians and Records; and certainly the great Freeholders, or Knights of Shires did much more juſtly deſerve that Title.

As for the other Paſſage out of *Mat. Paris*, where the Biſhops, Abbots, Earls and Barons, are called *omnes ad Regnum ſpectantes*; this is but a general way of Expreſſion in this Author, and proves nothing: For either the Word *Barones*, takes in all the ſmaller Tenants *in Capite*, or it does not; if the latter, then this Author does not exactly recite all the Orders of Men, whom your ſelf muſt acknowledge to have appeared there; ſince the great Barons alone could never make this *infinita Nobilium multitudo* mentioned in this Author; if the former, then it is plain, that he thereby comprehended more than thoſe who were

really Barons. Since it is certain that the ſmaller Tenants *in Capite* were not really ſo, and conſequently were meer Commoners, as I have told you more than once. And then make the moſt of this Word *Barones*, it may in a large and common Acceptation, take in all the chief Freeholders, or Lords of Manors, which (as I have already proved) were often called Barons in our Ancient Hiſtorians, and Laws of the firſt *Norman* Kings; and Mr. *Cambden* tells us, that under the Word *Baronagium*, *omnes Regni ordines continarentur*. This I ſay, ſuppoſing that by this *infinita Nobilium multitudo*, is to be underſtood, all the chief Gentry, or Freeholders of *England*, called often *Nobilitas Angliæ*, as I have already made out, and which may alſo take in the Repreſentatives of Cities and Towns; but if we ſhould ſuppoſe, that by the *Barones* here mentioned, are to be underſtood only the Tenants *in Capite*; yet, ſince they, together with the great Lords, made the chiefeſt Figure in the Government; it was eaſy for this Author to overſlip the particular Mention of others, it being enough to comprehend them with the Repreſentatives of the reſt of the Kingdom, under the general Phraſe of *Infinita Nobilium multitudo:* As I have already ſaid, the Conciſeneſs of Hiſtorians, was to be explained by our Statutes and Records, and not that their expreſs Words ſhould be interpreted by the obſcure or general Phraſes and Expreſſions of Hiſtorians; and if by *omnes de Regno*, are to be underſtood all the Tenants *in Capite* in general; how could this be without a notorious Tautology? Since if it be as you ſay, that the Biſhops, Abbots, Earls and Barons, comprehended all the greater Nobility, and the *Milites & liberi Tenentes*, all the leſſer, or Tenants *in Capite*, (who made then the whole Kingdom) if ſo, what can theſe Words *omnes de Regno* here ſignify, but ſo many idle Words without any Senſe or Meaning?

But it will be now more eaſy to anſwer your falſe Interpretation of theſe Words, *omnes Alij de Regno*, which you will needs have to ſignify only the Tenants *in Capite*; and it will be no hard Matter to ſhew you the Doctor's Prevarications on theſe Words; for as to the firſt Writ directed to the Sheriff of *Somerſetſhire*, though I confeſs the Words at the beginning of the Writ, are *omnes alij de toto Regno noſtro*; yet the Doctor has in his *Gloſſary* purpoſely concealed the Words that follow, which plainly reſtrain them to Tenants *in Capite*, and their Under-Tenants by Military Service. But if you pleaſe but to turn to the Writ which he has given us at large in his *Appendix*, *Numb.* 14. you will find, firſt, that this Writ recites, that the Earls, Barons, and *omnes Alij de Regno*, had granted the King an Aid of Two *Marks* on every Knights-Fee, *quæ de nobis Tenent in Capite*. *Secondly*, That at the Command of the Earls, Barons, and all others that held *in Capite*, the Sheriff ſhould diſtrain *omnes milites & liberi tenentes qui de eis tenent per ſervitium militare*, who were likewiſe to pay the King the like Sum of Two *Marks* for every Knights-Fee; ſo that you may here plainly ſee, that this could be no general Tax granted by the whole Kingdom, ſince none but Tenants *in Capite*, and their Under-Tenants by Knights Service, were chargeable with it; which, if given with their Conſents, muſt have been done in full Parliament, and in which they had Repreſentatives of their own chuſing; and if without their Conſents, was directly contrary to Law.

But you need go no farther than this Writ you have now cited, to prove that the *Milites & liberi tenentes*, were not at this Time only Tenants *in Capite*, as you ſuppoſe, but their Feudatory Tenants alſo; as appears by the expreſs Words of this Writ, which orders and directs the Sheriff to diſtrain *omnes Milites, & liberi Tenentes qui de eis tenent per ſervitium Militare*. But as for the other Writ to the Sheriff of *Suſſex*, which (as you ſay truly) relates to the former, to the Sheriff of *Somerſetſhire*; it ſufficiently interprets thoſe general Words, *omnes alij de Regno*, and expreſly reſtrains them to *omnes alij qui de nobis tenent in Capite*, who in a Council of themſelves alone, granted this Tax for themſelves only, as I have already proved; which, whether it was according to Law or not, we ſhall enquire by and by.

But in the mean Time, give me leave to anſwer your next Record, of the 48th of *Henry* III. which recites an extraordinary Service and Aid done by the *Prelati, Magnates, liberi Tenentes, & omnes alij de Regno:* Now that this was not a Service performed, or an Aid given by the Tenants *in Capite* only for the

the whole Kingdom, the Word *Subſidium* in the Writ may teach you, which was never granted otherwiſe than by the whole Kingdom in Parliament. But let us firſt conſider the Subſtance of this Record, which is indeed but the King's Declaration of a Right to all his Subjects in general, or the Freemen of the whole Kingdom, that what they had lately performed in *Articulo neceſſitatis prædictæ, non ſibi cedat in præjudicium, nec ad poſterum trahatur in conſuetudinem, vel conſequentiam nec ad hujus modi ſervitium compellentur*; which being the Effect of this Record, now ſee the Cauſe why it was granted, which you may find in another Record of the ſame Year, and on the Roll, and to which this Record you cited relates, which is a general Summons directed, *Archiepiſcopis, Epiſcopis, Abbatibus, Comitibus, Baronibus, Vice-comitibus, Militibus, liberis Hominibus, & univerſæ Communitati Comitatus Lincolniæ*, commanding them all, even the Citizens and Townſmen, immediately to appear with ſuch Arms as are there expreſſed (and were proper for each Man's Eſtate and Condition) for the common Defence of the Kingdom, againſt Strangers then ready to invade it; and this Record alſo ſays, *eodem modo ſcribitur cæteris Vice-comitibus Angliæ.* Now ſince it appears by this Writ of Summons, by which this Service and Aid was performed, that not only the Tenants *in Capite*, but all the Subjects of the whole Kingdom, were engaged in the Performance of it; can any body, but one who will take Things by halves, ſuppoſe that by theſe *omnes alij de Regno* there mentioned, (and who muſt certainly be the ſame Parties intended in the Doctor's own Record, *viz.* all the Freemen of the Kingdom) could be meant no more than the Leſſer Tenants *in Capite*, taken altogether, when they had been (according to our Senſe) all particularly named before?

M. 9. *dorſo.*

But that by theſe *omnes de Regno*, cannot be here meant only the Tenants *in Capite*, but all the Freemen of the whole Kingdom, I ſhall prove by another Record of the 16th of *Henry* III. and is the very Writ I gave you before, wherein it is recited, that the *Villani*, together with the reſt of the *Liberi Homines*, had given a Thirtieth Part of their Moveables; in Conſideration of which, this Writ concludes thus, *Conceſſimus etiam Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, Comitibus, Baronibus, & vobis omnibus Aliis de Regno noſtro, quod tam Charta noſtra, de Foreſta, quam alia Charta noſtra de Libertatibus, quas eis, & vobis fieri fecimus de cætero in omnibus teneantur*; ſo that it plainly appears, that by theſe Words in this Record, *omnibus Aliis de Regno*, muſt be underſtood all the Freemen of the Kingdom in general, unleſs you will allow none to have had any ſhare in theſe Charters, or to have received any Benefit by them, but the Doctor's Tenants *in Capite* alone; which ſure you will not affirm.

Rot. Cl. 2. 1 *Mem. dorſo.*

But leſt I tire you as well as my ſelf, in dwelling ſo long upon Things ſo plain and obvious, were not they by too much Artifice rendred obſcure, I come at laſt to the Concluſion of your Diſcourſe, which is no more than a Repetition of what you had ſaid at firſt; that becauſe all the Kingdom could not be ſummoned to appear in Parliament, and that *Villains* and Servants, *&c.* never paid to this Tax; that therefore the Words *omnes de Regno* are not to be underſtood literally; (a doughty Diſcovery) and therefore you have found an Expedient to help this Contradiction by your Tenants *in Capite*, and I by Knights, Citizens and Burgeſſes for the Laity, and by the *Procuratores Cleri* for the Inferior Clergy. Whoſe Interpretation is moſt agreeable to Truth, I durſt leave to any indifferent Judge; for I muſt needs tell you once again, I cannot ſee any manner of Reaſon, either from Authorities, or from the Nature of the Thing, that ever your Tenants *in Capite* could be the *omnes de Regno* in a legal Senſe, and as ſuch did repreſent all the Freemen of Eſtates in the whole Kingdom; therefore if you can prove this, it may go far to convince me, otherwiſe not.

M. Since you will not reſt ſatisfied with thoſe Authorities I have already produced to prove it; pray let me Diſcourſe with you a little more particularly of the Nature of *Tenures* by Knights Service. I therefore ſuppoſe that the Doctor hath very well proved by ſeveral Records, as alſo the Two Writs of the 19th of *Henry* the Third, to the Sheriffs of *Somerſet* and *Suſſex*, that the King anciently by his Prerogative, and his original Power and Right reſerved upon Knights Fees, did Tax the Military Tenants of his Tenants *in Capite*, and their other ordinary Free Tenants, and by his Writs cauſed them to pay

B. A. F. 117. *E. dein.* Ibid. 121.

both Scutage Tax, and Scutage Service, and other reasonable Aids, as often as Necessity required.

F. I grant indeed the Matter of Fact to have been sometimes as you say, since there is no averring against express Records; but I say likewise, that as for those Writs the Dr. has given us, concerning the King's Ordering the Sheriffs to distrain the Mesne Tenants of the Tenants *in Capite* for Scutage-Service, as to Marry their Daughters, or for the finding of Men in any Warlike Expedition; it was no more than what those Mesne Tenants were bound to do by the *Tenures* of their Estates; if they had failed to serve their Lords in Person, or by sufficient Deputies: And therefore the King might legally grant them Scutage upon such Tenants; and perhaps might also change their Service in Person into a pecuniary Aid, as appears by some of those Writs the Dr. has given us; and this not by his extraordinary Prerogative, but by Law. So likewise, tho' your Tenants *in Capite* could Tax themselves in their distinct Council, or else in the Common Council of the whole Kingdom, at what rate they pleased, for the Knights Fees they held of the King; and tho' the King might sometimes undertake, by this Pretence, to Levy a Scutage of Two Marks on their Under-Tenants also; yet does it not appear by either of those Records you have now cited, that they gave for more than themselves alone; the Words in the Writs being only, that they had given the King *Efficax Auxilium* of Two Marks upon every Knight's Fee (as well Wards as others) who held of him *in Capite*, without any mention of their Mesne Tenants. So that if the Sheriff was afterwards ordered to distrain these Mesne Tenants also, for Two Marks for each Knight's Fee they held of their Lords; this was straining a Point of Prerogative; for by the same Rule the King might (by the like Prerogative) have Taxed all the Bishops, Abbots, Great Lords, and all other Tenants *in Capite*, without their Consents, as well as their Mesne Tenants, tho' it was contrary to the express Words of the Charters of King *William* I. and King *John*, which you your self cited at our former Meeting: So that granting the Matter of Fact to have been practised sometimes, as your Records make out; this is no Proof that this was a constant Law, or settled Custom; much less that the King had a Right so to do.

B. I. A Pag. 179, 180. *M.* I do not doubt but that I can prove to you, that what this King then did in charging these Mesne Tenants, was according to his Ancient Prerogative, and what himself and his Predecessors had frequently done, both before and after that Clause in King *John*'s Charter of *Nullum Scutagium, vel Auxilium ponam in Regno meo*, &c. was granted; nay after it was granted by *Henry* III. and *Edward* I. that they taxed their Demesnes thro' *England*, (tho' not the whole Kingdom) by the Advice of their Privy-Council, until the Statute *de Tallagio non concedendo* was made, in the 34th of *Edward* I. And both *Richard* I. and King *John*, had taxed the whole Kingdom, without common Assent, before the Grant of *Magna Charta*: As also in the Reign of *Richard* I. as you may find in *Hoveden*, who lived at that Time; (the Passage is long, and therefore I shall only give you the Beginning of it;) *viz.* that this King, *Anno* 1198. (*Regno* 9.) *accepit de unaquaque Carucata Terræ totius Angliæ, V. Solidos de Auxilio*, &c. And then goes on to shew us the Manner how it was raised and collected; and 'tis observable, that he uses these Words, *Auxilium* and *Tallagium*, for the same Tax. So we find in *Mat. Paris*, That King *John* took a Seventh Part of all Moveables, without common Assent, and another time a Thirtieth; the Great Men and Clergy grumbling at it. King *Henry* III. also taxed all his Demesnes, in the 33d Year of his Reign, as appears by a Writ in the Close-Roll of this Year; whereby he also commands the Sheriff of *Bucks*, that he make *Philip Basset* a *Rationabile Tallagium, de hominibus suis de eo tenentibus in Manerio de Wycumb, quod aliquando fuit Dominicum Prædecessorum Regis*, &c.

Rot. 11. *Hen.* 3. *M.* 19.

Fol. 442.

F. 209. *A. D.* 1203, 1207.

M. 1.

B. A. J. 178. In the 39th Year, this King (as the Doctor shews us at large, by a Record in the keeping of the Remembrancer of the *Exchequer*) taxed all his Demesnes; and, among the rest, the City of *London* at 3000 Marks; which, tho' with some Contest, (mention'd in this Record) they were at last forced to pay; because it was found upon Record, that this King, and his Father, had several times Talliated (or Taxed) the said City in like manner, at the Sums

Sums therein mentioned; ſo that at laſt the Mayor and Citizens were fain to acknowledge themſelves thus Talliable by the King.

So in the 52d Year of his Reign, he Taxed all his Demeſne-Lands beyond *Trent*, by his Eſcheators: And this Right was acknowledged by all the Biſhops, Earls and Barons, in the 33d Year of *Edward* I. as appears by their Petition to him in Parliament, in theſe Words: *Ad Petitionem Archiepiſcoporum, Epiſcoporum, Prælatorum, Comitum & Baronum, & aliorum proborum hominum de Terra petentium quod Rex concedere velit quod ipſi poſſint talliare antiqua dominica, unde ſunt in Tenantia, ſicut Rex Dominica ſua taliavit; ita reſponſum eſt, fiat ut petitur.* *Rot. Cl. 52. H. 3. M. 10. dorſo.* Ryley's *Placit. Parl.*

From all which you may plainly ſee, that the Kings of *England* had anciently a Prerogative of laying Taxes, not only upon their own Tenants and their Meſne Tenants who held under them, but upon the whole Kingdom too; and if their Succeſſors have acted otherwiſe, it has proceeded from their meer Grace and Favour, who have tyed up their own Hands from exerciſing this Prerogative.

F. Pray, Sir, obſerve, that you have now quitted the main Queſtion, Whether others beſides the Tenants *in Capite* appeared in Parliament before the 49th of *Henry* the Third; and after that, till the 18th of *Edward* the Firſt? And now ſtart a new Point, Whether the King, with the Conſent of his Tenants *in Capite* would not Tax the whole Kingdom? And to make out this, you have muſter'd up a great many Authorities; but for what End I know not, unleſs it be to prove that ſome former Kings ſtretch'd their Prerogative to act directly againſt Law, and their own Charters to the contrary; and to juſtify them in it when they have done; as if all Things were done according to their Lawful Prerogative, becauſe they did it. If this be Law or Reaſon either, much good may do you with it: For at this rate the King, notwithſtanding all Laws made and ſworn to by him to the contrary, may take what he pleaſes out of our Eſtates without our Conſents, becauſe his Predeceſſors broke the Laws, and their Coronation Oath into the Bargain. But you might have remembred, that *à de facto ad jus, non datur conſequentia*; but I doubt the Precedents you have now brought, will not come up to the Proof of the Aſſertion you have laid down: For it is plain, as well from King *John's* Charter, as by that Paſſage in *Bracton* I but now cited, whereby it appears, that extraordinary Taxes, ſuch as *Hidage*, *Corage*, and *Carvage*, *& alia* (under which I ſuppoſe was included your Scutage Tax alſo) could not be impoſed without the Conſent of the Common Council of the whole Kingdom, when the King met his People in Parliament. If then this were Law, whatever King *John* or *Henry* the Third, or any other King acted contrary to this Rule, was illegal, and produced among other Miſchiefs the general Revolt of all the Baronage, *i. e.* as well the Inferior as Superior Nobility of the whole Kingdom; till ſuch Time as our Kings finding they could do no good by Force, were fain, at laſt to content themſelves with the Legal Prerogatives of the Crown, and by new Laws and freſh Declarations of the Ancient Law, to declare it unlawful for them to impoſe any Taxes upon their Subjects, without their Conſents in Parliament.

But let me tell you, that by thus ſetting up the King's Illegal Prerogative of taxing the Meſne Tenants of their Tenants *in Capite*, you quit the Queſtion; For I asked you by what Right the Tenants *in Capite* (whom you ſuppoſe) could grant by this great Charter a Fifteenth of the Moveables of the whole Kingdom, as well of thoſe who did not hold of them by Military Service, as of thoſe that did; nay of thoſe who never held of them at all? And you then fly preſently to I know not what unknown Royal Prerogative of Taxing the Meſne Tenants of the Tenants *in Capite* at pleaſure; which you muſt allow, either was according to Law, or it was not: If the former, I have already proved he could not do it by Law at all; but if againſt Law, there was the like Reaſon why he ſhould have had the like Prerogative over his Tenants *in Capite* too; even over the very Biſhops, Abbots, and Temporal Lords: And then I deſire to know whether the great Council of the Kingdom had not been long ſince deſtroyed and given up.

But to examine your Authorities. It is true, *Hoveden* ſays of *Richard* the Firſt, that *accepit de unaquaq;* *Hida Terræ V. ſolidos*; yet does it not therefore follow, that he took this Tax without conſent of his great Council. It was the ordinary Phraſe of Writers in thoſe times, to ſay, *Rex accepit*, i. e. received ſuch a Tax, when indeed he took nothing but what was given him by his Parliament. And therefore, tho' we find this Tax not mentioned in any other Writer, but only *Hoveden*, and ſo cannot give you an expreſs Proof that this Tax was granted in a Great Council; yet it is moſt likely (nay, certain it was) for the Word *accepit* does not in its own nature import any violent or illegal Exaction: And therefore conſidering the nature of the Thing, it is greater Reaſon to ſuppoſe, that this Aid was granted by Conſent; ſince this ſame Author tells us, in the Relation of this Affair, that this Money was received by the Hands of two lawful Knights of each Hundred, and that they did Anſwer this Money to the *Exchequer*, *Coram Epiſcopis*, *Abbatibus*, *& Baronibus ad hoc aſſignatis*, who would never have undertaken it, had not this Tax been granted by the Common Council of the Kingdom; but that this King could not Tax the whole Kingdom at his pleaſure, may appear by a Relation out of this very Author, in the very ſame Year, but a little before, *viz.* That when the King demanded by *Hubert*, Archbiſhop of *Canterbury*, that *Homines Angliæ*, the Men of *England* ſhould find him 300 *Milites*, *i. e.* Knights to ſtay one whole Year in his Service, or elſe would give him ſo much Money, as that he might therewith maintain thoſe 300 Knights in conſtant Pay, *viz.* "to every Knight Three Shillings of *Engliſh* Money "Wages a Day; and that to grant this, all the reſt were willing, as not da- "ring to reſiſt the King's Will; only *Hugh*, Biſhop of *Lincoln*, as a true Ser- "vant of God, abſtaining from all evil, anſwered, That he would by no means "agree to the King's Deſire, becauſe it would redound to the detriment of "his Church, *&c.*" And ſo it ſeems the Buſineſs fell and came to nothing. Now it is plain, that this Requeſt muſt have been made in the great Council of the Kingdom, or at leaſt in that of the Tenants *in Capite*; and if he could not charge his Subjects with the keeping but of 300 Horſemen for one Year, without their Aſſents, can any Body believe that he ſhould preſently after extort a much greater Sum, *viz.* Five Shillings out of every Plowland in *England*? But as for all your Precedents for King *John*'s Reign; he was ſuch a Notorious Tyrant, and Breaker of his Coronation Oath, and common Faith both to God and Man, that I hoped that neither your ſelf nor any good *Engliſh*-Man would have fetch'd Precedents for Prerogative, from ſo profligate a Reign as his; and in which I grant there were more than once Illegal Exactions of this Nature; which yet are branded by thoſe very Hiſtorians that relate them, for great Oppreſſions and unjuſt Exactions; as particularly in this firſt Inſtance out of *Mat. Paris*, of King *John*'s taking away by Force the Seventh of the Moveable Goods of the whole Kingdom; which is by this Author called by no better than *Rapinian*, Rapine or Robbery.

Pag. 441. *b.*

Vid. Chron. Thom. Wikes, *& Annales de Waverly in* Anno 1207. *Publiſhed at* Oxford.

The ſame I may ſay to the like Exactions of his Son *Henry* the Third, which are branded by all Writers, as horrible and illegal Oppreſſions; nay, are owned to be ſo by this King's frequent Confirmations of *Magna Charta*, and Acknowledgments of his Breach of them, and Promiſes to obſerve them better for the future. But I am ſorry to find your Doctor, whom you follow, both in his Anſwers to Mr. *P.* and Mr. *A.* as alſo in his compleat Hiſtory, ſtill to cite the moſt violent and illegal Actions, nay the very Perjuries, for Flowers of the Crown, and Royal Prerogatives.

But as for the Authorites you urge for this King's Talliating his Demeſnes without Conſent of Parliament; you your ſelf grant that this Talliage was not general upon the whole Kingdom; and if ſo, could only concern his own Tenants in Ancient Demeſne, and none elſe; who were always exempted from being taxed with the reſt of the Nation, becauſe they were liable to yield the King a reaſonable Talliage, *ratione Tenuræ*, whenſoever he needed it; yet this was counted rather a Privilege than otherwiſe; ſince they were not only free from all other Burthens and Parliamentary Attendance; but were alſo Taxed much leſs than the reſt of the Nation, in regard of their Tilling the King's Lands for the Maintenance of his Houſhold: But when this reaſonable Prerogative

grew

grew to be abuſed, and the Exactions levied upon them became intolerable, then they would no longer ſuffer it; but got it taken away by the Statute *de Tallagio non concedendo.* After which we find the Tenants in Ancient Demeſne frequently giving their Shares of Aids and Subſidies in Parliament by Delegates of their own, as in the Record of the 35th of *Edward* the Firſt, which you have now cited; till at laſt they came to be reſolved into the common Body of the Kingdom; but as for the City of *London*, it was never taken for part of the King's Demeans; and ſo is not to be found in *Doomeſday*-Book; but as appears by Record, held of the King *in Capite*; and therefore could be no otherwiſe Taxed than as the reſt of the Tenants *in Capite*, that is, by the Common Council of the Kingdom. And this made the *Londoners* deny to be otherwiſe Talliated, as appears by this Record of *Henry* the Third, which you have now cited. But the truth is, they had this Exaction firſt laid upon them in the exorbitant Reign of King *John*; and this was afterwards trumped again upon them in all the ill part of his Son's Government, becauſe his Father had done it before; and I doubt not but if Ship-Money had paſſed unqueſtioned, and been as often paid in the Reign of King *Charles* the Firſt, but that it would have been urged as a Precedent in the Reign of *Charles* the Second.

But as for your laſt Authority of the 33d of *Edward* the Firſt, pray take Notice, that it is before the Statute *de Tallagio non concedendo*, and extends only to ſuch Eſtates in Ancient Demeſne, as were held of the King by Noblemen or Gentlemen, either by Gift, or Purchaſe; and which, for all that, ſtill kept the Ancient Cuſtom of being Talliated by the King, as their Under-Tenants were by them, to enable the Lords to pay the King's Talliage; and in this Senſe I underſtand theſe Words in this Record, *unde ſunt in Tenantia*; *i. e.* of which they are in Tenancy to the King. Nor does the Record call them *Dominica ſua*, as it does the King's Demeſnes that follow: So that this could not be a Tax upon all Under-Tenants by Knights Service, as you ſuppoſe; ſince their Eſtates were never called *Antiqua Dominica*, and therefore I think after all, you cannot ſhew me any legal Precedent that our Kings claimed a Right under Colour of their Prerogative, of Taxing the whole Nation *de Alto & Baſſo*, at their pleaſure.

M. I ſhall not now diſpute it longer with you, whether the Kings of *England* had not anciently a Power of Taxing the Lands held of them, without the Conſent of their Great Council; but thus much I think I may ſafely aver, That when this Great Charter was made, the Tenants *in Capite*, as the Common Council of the Kingdom, gave Taxes and made Laws, not only for themſelves but their Meſne Tenants, and the whole Nation alſo. Nor was this at all unreaſonable, that thoſe who thus held Eſtates by Meſne Tenure under the Tenants *in Capite*, ſhould be bound by the Acts of thoſe of whom they held them; ſince we ſee in *Scotland*, that at this Day none ſit there, either as Commiſſioners of Shires, or Burgeſſes for the Royal Boroughs, but ſuch as hold *in Capite* of the King; for anciently, before the Law for excuſing the ſmaller Barons or Tenants *in Capite* from coming to Parliament, and ſending Commiſſioners of Shires in their ſtead, was intoduced by a Statute made in the Seventh Parliament of King *James* the Firſt, *Anno Dom.* 1420, it conſiſted all of Tenants *in Capite*, viz. of the Biſhops, Abbots, Priors, Earls, Barons, *& Liberi Tenentibus qui de Rege Tenent in Capite*; as appears by the very Words in the *Latin* Titles to divers of thoſe Statutes, as you may find them in *Skenes* Collection of *Scotch* Laws. Now if this Law did anciently, and does ſtill prevail in *Scotland*, that the Tenants *in Capite* ſhould be the ſole Repreſentatives of that whole Kingdom, I cannot ſee any Reaſon why it might not have been ſo anciently in *England* alſo, eſpecially ſince I can give you ſo good Reaſons to back this Opinion.

B. A. J. pag. 171.

F. I will Anſwer your Argument from *Scotland* by and by; but in the mean Time give me leave to tell you why I think it could never have been the Cuſtom in *England*; and that for two Reaſons, Firſt, becauſe it was againſt Reaſon; and 2*dly*, becauſe it was againſt the known Law of the Kingdom. That it was againſt Reaſon, is apparent; ſince what Reaſon was there, that if a Man in thoſe Times purchaſed an Eſtate for a valuable Conſideration, of a

Lord,

Lord, or any other Tenant *in Capite* (as certainly Thouſands did) to be held either by Knight's Service, or in Soccage, that ſuch a Tenant ſhould lye at the Mercy of his Lord, to diſpoſe of his Eſtate in Taxes, and make Laws for him at his Pleaſure; however exorbitant thoſe Taxes were, or inconvenient thoſe Laws might prove; the Lord being no Repreſentative, of his own Choice or Appointment?

In the next Place, that this was contrary to the received Law and Cuſtom of the Kingdom in thoſe Times, I can prove by Two very ſufficient Authorities, the one of the Earl of *Cheſter*, the other of the Biſhop of *Durham*. Now it is certain that both this Earl and Biſhop held their County Palatines *in Capite* immediately of the King, nor had thoſe Counties any Repreſentatives in Parliament, till long after that they had Knights of Shires and Burgeſſes granted them by particular Statutes made for that Purpoſe; now according to your Hypotheſis, all the Freeholders and Inhabitants of thoſe County Palatines ſhould have been bound by all Acts of Parliament, and Taxed with the reſt of the Kingdom as often as there were Laws made, and Taxes given when their Biſhop or Earl was preſent, which was not ſo; for in the firſt Place as for the County of *Cheſter*, if the Earl had been the Repreſentative in Parliament of his Tenants by Knight's Service or otherwiſe, as alſo of all the Abbeys, and the City of *Cheſter* it ſelf, and all other great Towns in that County, his Vote in Parliament would have obliged all of them; and there would have been no need of a Common Council or Parliament of the States of the whole County, in which they then made Laws, and taxed themſelves as a ſeparate Body from the reſt of the Kingdom; as may appear from theſe following Records which Mr. *A.* hath given us; the firſt of which is a Writ of King *Edward* the Firſt, directed *Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, Baronibus, Militibus, & omnibus aliis Fidelibus ſuis in Comitat. Ceſtriæ*; reciting, That whereas the Prelates, Counts, Barons, *& alii de Regno*, had given him a 15th of their Moveables, he deſires that they alſo would of their Benevolence and Courteſy (in Latin *Curialitate*) grant him the like Subſidy; which, Note, could not be done out of a Common Council.

J. A. P. 12. *Rot. Pat.* 2. *E.* 1. M. 6.

So likewiſe in another Writ of the 20th of this King, reciting, That whereas the *Probi Homines, & Communitas Ceſtriæ ſicut cæteri de Regno noſtro 15mam partem omnium mobilium ſuorum nobis conceſſerunt gratioſe.* Now ſuppoſing (as the Doctor always does) that theſe *Probi Homines* were the Earls Tenants *in Capite*, what can this Word *Communitas* here ſignify, but another Sort of Men diſtinct from them, *viz.* the Commonalty or Commons of that County? And which is alſo remarkable, this County was now fallen to the Crown for want of Heirs Male of the laſt Earl; and ſo according to the Doctor's Notion, the King being their ſole Repreſentative needed not to have been beholden to them for theſe Subſidies; ſince tho' not as King, yet as Earl of *Cheſter*, he might have taxed them himſelf; which yet he thought not fit to do, becauſe he knew it was contrary to the Rights and Privileges of that County, which had ever ſince the Grant of it to *Hugh Lupus* by *William* the Firſt, always been taxed by themſelves.

Rot. Pat. 20. *E.* 1. *m.* 6.

Which Privileges are alſo expreſly ſet forth in a Supplication of all the Eſtates of this County Palatine to King *Henry* the Sixth, which Mr. *P.* has given us from an ancient Copy of it then in the Hands of Sir *Thomas Mainwaring* of that County, Baronet: Wherein the "Abbots, Priors, and Clergy, Barons, "Knights, Eſquires, and Commonalty, ſet forth, that they with the Conſent of "the Earl, did make and admit Laws within the ſame, *&c.* and that no In- "heritors, or Poſſeſſors within the ſaid County were chargeable or liable, or were "bounden, charged, or hurt of their Bodies, Liberties, Franchiſes, Lands, Goods, "or Poſſeſſions, unleſs the ſaid County had agreed unto it. Now what can here be meant by County but the Common Council, or Parliament thereof, ſince otherwiſe they could make no Laws, nor do any other publick Act?

P. R. C. p 45, 46.

The like I may ſay for the County Palatine of *Durham*, which from the Grant thereof by *William Rufus* to the then Biſhop, had always been taxed by themſelves, and not by the Biſhop in Parliament, and that as low as the Reign of *Edward* the Third; as appears by this Record of the 14th of that King; containing a Letter or Commiſſion to R. Biſhop of *Durham*; reciting, "That whereas the Prelates, Earls, Barons and the Commons of Counties, "had given him a 9th of their Goods there mentioned, that therefore the

Rot. Aleman 14 *Ed.* 3. *m.* 9.

" Biſhops ſhould convene the *Magnates & Communitatem Libertatis veſtræ* " (to wit, of his County *Palatine*) *ad certum diem, & locum*, with all conve- " nient Speed; and that done, to perſuade and excite the ſaid *Magnates &* " *Communitas*, to grant the King the like, or a larger Subſidy, towards the " Maintenance of his Wars; which had been altogether in vain, if the Biſhop, " or the King could in thoſe Days have Taxed this County at their " Pleaſure.

Now if theſe great Tenants *in Capite* could not Tax their Meſne Tenants without their Conſents, much leſs could the reſt of the Tenants *in Capite* in *England* impoſe Taxes on their Tenants in Military Service, or in Socage, without their Conſents, which laſt had a much leſs Dependance upon them.

M. I muſt confeſs I never conſidered theſe Precedents of the County *Palatine* of *Cheſter* and *Durham*; and therefore can ſay nothing to them at preſent, ſince it is Matter of Fact; but as to Reaſon and Law, I think it is conſonant to both, that not only Tenants in Military Service, but Socage Tenure, ſhould be bound by the Acts of their Superior Lords, of whom all the Lands of *England* were formerly held by Knights Service: And though in Proceſs of Time many of theſe Eſtates and Lands became free Tenements, or were holden in Socage; that is, were a ſort of Freeholders; yet the Lords retained Homage (which in the Times we now write of, was no idle inſignificant Word) and by that a Dominion over the Eſtate; whereby upon Diſobedience, Treachery, or Injury done to the Lords, *&c.* the Lands were forfeited to them. And although the Lands, nor the Tenants of them (which were termed Freeholders) were ſubject to any baſe Services, or ſervile Works, yet the Lords had a great Power over theſe Tenants, by reaſon of their doing Homage to them (which though now antiquated) yet *eo nomine*, their Lands were many ways liable to Forfeiture, and Taxes too. *B. A P. Pag.* 171.

So that upon all theſe Accounts, it was then as reaſonable that the Tenants *in Capite* ſhould in thoſe Days make Laws, and grant Taxes for all the reſt of the Kingdom; as the Tenants *in Capite* in *Scotland* ſhould do ſo to this very Day, for all the Inhabitants of that Kingdom of never ſo great Eſtates; and to this Argument which is certain in Matter of Fact, you have yet anſwered nothing, nor do I believe can.

F. I cannot ſee, notwithſtanding what you have now ſaid, that the Superior Lords, by reaſon of Homage, ſhould have an abſolute Power over their Tenants Eſtates: For though in the Profeſſion of Homage to the Lords, I grant the Tenant thereby promiſed to become the Lord's Man; yet he never thereby meant to become his Slave; and there were mutual Duties on both Sides; ſo that if the Lord failed to protect his Tenant in his Eſtate, or unjuſtly oppreſſed him, he might have refuſed (nay renounced) his Homage, till the Lord had done him right; nor can I ſee how a bare Right of having the Forfeiture of the Eſtate in the Caſes you have put, which yet let me tell you, were never ſo ſtrict in reſpect of Socage as Military Tenure, as I could ſhew you, were it worth while; for if this Right of Forfeiture alone, could give the Superior Lord a Power over his Tenant's Eſtate, to make Laws for him, and Tax him as he pleaſed, then by the ſame Rule, the King as Supreme Lord over all his Tenants *in Capite*, ſhould have had the like Power over them, of making what Laws for them, and impoſing what Taxes he pleaſed upon them, without their Conſents; and ſo there would have been no need of Common Councils or Parliaments at all, ſince upon your Hypotheſis, the Tenants *in Capite* were the only Perſons that had any Right to appear there. But if neither the Wardſhip, Marriage, nor Relief of the Heir, could give the King ſuch a Power over his Tenants *in Capite*, much leſs could they attain the like Right over all their Meſne Tenants by Knights Service; for that would have given them a greater Power over their Tenants than the King himſelf had over them; therefore if thoſe great Tyes of Wardſhip, Marriage and Relief of the Heir, could neither give the King, nor yet any Tenant *in Capite*, Power over the Eſtate or Liberty of his Tenants by Knights Service, much leſs over their Tenants by Socage Tenure, who were not under this Subjection. And farther, if a Right of Forfeiture alone,

in ſome Caſes, could have given the Lords a Power of making Laws, and granting Taxes for his Tenants *in Socage*, then they ſhould have ſtill kept that Right by this Rule, ſince all Lords had a Right of Forfeiture even upon their Tenants in Socage in ſome Caſes, before the Statute of taking away Knights Service, and the Court of Wards, and Liveries, in the Second Year of King *Charles* the Second; as I could prove, were it worth while.

As to *Scotland*, I ſhall not deny the Matter of Fact to be as you ſay, that it hath at this Day no other Repreſentatives in their Parliament, but the Tenants *in Capite*; yet whether it was ſo or not anciently, I very much doubt; ſince I find the very ſame Words and Phraſes made uſe of in the Titles of their old Statutes, as alſo in their Records, to expreſs the Conſtituent Parts of the great Council of that Kingdom, as were uſed in *England*, to expreſs thoſe of *England* at the ſame Time. For Proof of which, pray ſee the old Charters of King *Malcolm* III. and *David* I. as you may find them at the end of the Second Volume in Mr. *Dugdale*'s *Monaſt. Anglic.* and you will ſee the former to have been made by the Aſſent of the *Comites & Barones Regni, Clero adquieſcenteque Populo*, &c. and as I ſhall alſo ſhew you from Sir *John Skene*'s Collection of *Scotiſh* Laws; to begin with the moſt Ancient there extant, (*viz.*) an Aſſize or Statute made in the Time of King *William*, Sirnamed the *Lion*, who began his Reign *Anno Dom.* 1165. in the Fifth of our *Henry* I.; to the Obſervance whereof it is there expreſſed, that the *Epiſcopi, Abbates, Comites, Barones, Thani, & tota Communitas Regni tenere firmiter juraverunt*. So likewiſe King *Alexander* II. who began to Reign *Anno* 1214, which was the Sixteenth Year of our King *John*, and he made his Laws *de conſilio & aſſenſu venerabilium Patrum Epiſcoporum, Abbatum, Baronum, ac proborum hominum ſuorum Scotiæ*, and who theſe were, may alſo farther appear by the beginning of certain Statutes made by the ſaid King *Alexander* in the ſame Year, which begin thus, *Statuit Rex per conſilium & aſſenſum totius communitatis ſuæ*, &c.

Vid. Chart. Fundat. Monaſt. de Dunferling.

B. A P. p. 96. *& dein Statut.* Williel. *Reg. Fol.* 2. *Cap.* 7.

Stat. Alexan. *Reg. Fol.* 22. *Cap.* 2.

I ſhall next produce the Title of a Parliament holden the 18th of *Robert* I. who began his Reign *Anno Dom.* 1306, in the Third of our *Edward* I. *In Dei nomine*, Amen. *Robertus Dei Gratia Rex Scotorum Anno Regni ſuo Decimo tertio die Dominica proxima*, &c. *habito ſolenni tractatu, cum Epiſcopis, Abbatibus, Prioribus, Comitibus, Baronibus, & aliis Magnatibus de Communitate totius Regni ibidem congregatis*; and which Title concludes thus, *de Communi conſilio & expreſſo conſenſu omnium Prelatorum, & liberi Tenentium predictorum ac totius Communitatis predictæ ordinavit, condidit*, &c. *Statuta infra Scripta*, &c. So likewiſe in an ancient Manuſcript, called, *Scoto Chronicon*, formerly in the Poſſeſſion of the Right Learned and Honourable *Arthur* Earl of *Angleſey*, and now in the *Herald-Office*, you will find the Entail of the Crown of *Scotland* to have been made by this King *Robert*, *Anno Dom.* 1315, in a general Council or Aſſembly of the whole Kingdom of *Scotland*, as well Clergy as Laity, which as this Author tells us (who lived within Sixty Years after) was held, *Dominica proxima ante feſtum Apoſtolorum Congregati apud Aere in Eccleſia Parochiali ejuſdem Laici, Epiſcopi, Abbates, Priores, Archidiaconi, nec non Diaconi, & ceteri Eccleſiarum Prælati, Comites, Barones, Milites, & ceteri de Communitate, Regni Scotiæ, tam Cleri quam Laici*, &c.; from which it is apparent, there was a great Council of the whole Kingdom (as in *England*) more comprehenſive than that of Tenants *in Capite* alone.

Stat. Rob. 1. *Fol.* 29.

Chap. 24.

And that our *Engliſh* Records alſo agree with theſe *Scotch* Statutes, you may ſee by Two Records which Mr. *Pryn* has given us in his Hiſtory of *Papal Uſurpations*, out of the Rolls of the 17th of *Edward* I. It is a Letter to *Eric*, King of *Norway*, concerning the Marriage of his Son *Edward*, with his Grand-daughter, then Heireſs of *Scotland* and *Norway*, reciting that the *Cuſtodes* (*Soil. Regni Scotiæ*) *Magnates, Prælati, ac tota Communitas predicti Regni Scotiæ unanimi, & expreſſo conſenſu*, had agreed to the ſaid Marriage. So likewiſe in another Letter of this King *Edward*'s about the ſame Marriage, he declares that he had by his Procurators therein named, treated and agreed with the *Cuſtodibus, Epiſcopis, Abbatibus, Comitibus, Baronibus, & tota Communitate ejuſdem Regni*; and it preſently follows, *ac prædicti nobiles & tota Communitas Regni Scotiæ prædicti*, Now whom

Rot. Par. 17. *E. M.* 4.

Rot. Par. 18. *E.* 1. *M.* 9.

whom can this Word *Communitas* ſignify, put here diſtinct from the Earls, Barons, and Nobles, but the Commons of that Kingdom?

So likewiſe in the Fourteenth Year of King *Robert* the Firſt, there was a Letter ſent from the Parliament of *Scotland* to the Pope, complaining againſt the Violence of the King of *England* (which is to be ſeen in Manuſcript, and is alſo Printed by Dr. *Burnet*, in his Hiſtory of the Reformation) and by which it plainly appears, that the *Comites, Barones, Liberi Tenentes, & tota Communitas Scotiæ*, agreed to this Letter. *An. Dom.* 1320. *Part* 2. *Fol.* 109. *N.* 10.

And that the Cities and Borough Towns were at that Time Part of this *Communitas*, appears by the League made between this King *Robert* and the King of *France*, in the 28th Year of our *Edward* the Firſt, which is to be ſeen in a Roll of this Year, ſtill Extant in the *Tower*; which League was ratified and confirmed in their Parliament, by King *John de Baliol, ac Prælatos, & nobiles Univerſitates, & Communitates civitatum, & villarum prædicti Regni Scotiæ*; and I ſuppoſe you will not deny that in *Scotland*, the Cities and Boroughs from Times beyond all Memory, ſent their Proxies and Repreſentatives to the Parliament in *Scotland*, and that each Citizen and Burgeſs ſo ſent, had as good a Vote in their Parliament, as the greateſt Biſhop or Earl of them all. *P. R. C.* p. 83.

M. I deſire no better Proofs than what your ſelf have now brought to make out, that the Tenants *in Capite* are not only at this Day, but have been from the very beginning of Parliaments in that Nation.

For I ſhall appeal to thoſe very Statutes and Records you have now cited, which compared with divers ſubſequent Statutes of that Kingdom, will make the Matter plain enough, that the *Communitas*, and theſe *probi homines* mentioned in theſe Laws you have cited, were the Community of the Tenants *in Capite* only.

In the Firſt Place, therefore, let me obſerve from that very Law of King *Alexander*'s, the Title of which you have but now quoted, that theſe Words *per aſſenſum Communitatis* cannot here ſignify the Commons, ſince they alone could neither adviſe, nor give their Conſent to make Laws, and therefore they muſt needs refer to the whole Community or Aſſembly of Eſtates, conſiſting of Tenants *in Capite* only; as I ſhall prove by a Parliament of King *Robert* III. who began to Reign *Anno Dom.* 1400, (in the 10th Year of our *Richard* II.) the Title is thus, *Parliamentum Domini noſtri* Roberti III. *Scotorum Regis*, &c. *vocatis & ſummonitis more ſolito Epiſcopis, Prioribus, Ducibus, Comitibus, Baronibus, Liberis Tenentibus & Burgenſibus qui de Domino Rege tenent in Capite*; and this is alſo confirmed from the Title to a Parliament held at *Perth*, *Anno Dom.* 1427, being the 23d of King *James* I. *Summonitis & vocatis more ſolito Epiſcopis, Abbatibus, Prioribus, Comitibus, Baronibus, & Liberi Tenentibus, qui de nobis tenent* in Capite, *& de quolibet Burgo certis Burgenſibus.* So that I think nothing can be plainer from theſe Ancient Statutes, than that the *Scotiſh* Parliaments did anciently conſiſt of no other Members than the Biſhops, Abbots and Priors, Dukes and Earls, Barons, Freeholders and Burgeſſes, which held of the King *in Capite.* *B. A. P.* p. 98. *Stat.* Rob. 3. *Fol.* 63.

Having thus ſhewn the Ancient Conſtitution of the *Scotiſh* Parliaments, for your Satisfaction, I ſhall farther ſhew when, and how it was altered.

In the Seventh Parliament of King *James* the Firſt, held at *Perth*, *Anno Dom.* 1420, there was a Law made (which I ſhall contract) "That the ſmall Barons "and Freeholders need not to come to Parliaments, and that for the future out of "each Sheriffdom there ſhould be ſent Two or more wiſe Men after the Large- "neſs of the Sheriffdom, the which ſhall be called Commiſſaries of the Shire; "and that theſe ſhould have full Power finally to hear and determine all Cauſes "to be propoſed in the Great Council or Parliament; and that the ſaid Com- "miſſaries ſhould have Coſtage of them of each Shire that ought to appear in "Parliament or Council. I have only given you an Abſtract of this Statute, be- cauſe it is pretty long, and penn'd in old *Scotiſh Engliſh*, but you may conſult it at your Leiſure. *Statut. Jacob.* 1. *ibid.*

And this is farther confirm'd by a ſubſequent Act of Parliament of King *James* the Sixth, holden at *Edinburgh*, *July* the 29th, 1587, wherein after a Repetition *B. A. P. Fol.* 99.

of the former Act of King *James* the firſt, and a Confirmation of the ſame, it follows thus:

" And that all Freeholders of the King, under the Degree of Prelates and " Lords of Parliament, be warned by Proclamation to be preſent at the chu- " ſing of the ſaid Commiſſioners; and none to have voit in their Election " but ſick as hes Fourtie Shillings Land in free tenandrie halden of the King, " and hes their actual Dwelling and Reſidence within the ſame Schire, *&c.*" I need give you no more of this Act; but I think it is moſt clear from this as well as the former Act of Parliament, that the Commons in *Scotland* were only the King's Tenants *in Capite*, and are ſo at this Day; ſince none but they can either chuſe or be choſen Commiſſioners for the Shires. But as to the Boroughs, who do each of them ſend but one Commiſſioner or Burgeſs (except the City of *Edinburgh*, which ſends two) all which are choſen by the Common Council of the Towns; now there are in *Scotland* three ſorts of theſe Burghs, that is to ſay, Royal Burghs, Burgs of Regality, and Burghs of Barony; but only the Royal Boroughs, the *Burgi Dominici Regis*, or *qui de Rege Tenent in Capite*, ſend Commiſſioners to Parliament, and are in Number Sixty.

Vid. Preſent Stat. of Scotland, p. 17.

Ibid. p. 100.

To conclude, That I may apply what hath been ſaid concerning the Conſtituent Parts of the *Scotiſh* Parliaments to ours Anciently, it ſeems to me, that from the great Affinity there was between ours and theirs, 'tis certain, that our and their *Communitas Regni*, was the ſame, that is, they were the ſmall Barons and Tenants *in Capite*.

F. I cannot deny but that the Parliament of *Scotland* hath, for above theſe Two Hundred Years, conſiſted of the Biſhops, Abbots, and Temporal Lords, together with the Leſſer Tenants *in Capite*, or their Repreſentatives the Commiſſioners for Shires, and Burgeſſes of Cities and Towns, till the Reformation, that the Biſhops and Abbots were quite taken away; tho' the former were reſtored to their Places in Parliament, by a Statute made in the latter end of King *James* the Firſt; yet I cannot allow, that from the beginning of that Government, the *Scotch* Parliaments have conſiſted of no other Members than thoſe; ſince the Word *Communitas* coming, as it does in theſe old Statutes and Records (I have now cited) immediately after the *Prælati, Comites, Barones, & Milites*, &c. muſt ſignify a Diſtinct Order of Men from the Tenants *in Capite*, called in the Statute of King *James* the Firſt, the ſmall Barons, and ſince the Citizens and Burgeſſes, though none of thoſe Barons, were alſo comprehended under this *Communitas* (and whom you grant to make the Third Eſtate,) why this Word might not comprehend all the other great Freeholders, I can ſee no Reaſon to the contrary.

And therefore I ſuppoſe, that in the Reigns of King *David* the Second, or *Robert* the Second, or elſe the beginning of *Robert* the Third, there was a great Alteration in the conſtituent Parts or Members of the *Scottiſh* Parliament: And about that Time, the Chief Freeholders, or Lords of Manors, who held of Biſhops, Abbots, and other Temporal Lords, as well as of the Tenants *in Capite*, or elſe of the King, by petty Serjeanty, or Socage Tenure; as alſo many of the ſmall Towns, or Baronies, might either forbear coming at all, or elſe deſire to be excuſed, becauſe of the great Trouble and Charge of Attendance; (as you ſee the ſmaller Tenants *in Capite* afterwards did, when Commiſſioners for Shires were appointed in their ſteads) and ſo might by Degrees leave off coming, or be excluded by ſome Law not now Extant. And thus the Tenants *in Capite*, might become the ſole Repreſentatives of the whole Nation in Parliament. And I am of this Opinion, becauſe in many of the old Statutes before the Time of *Robert* the Second, we find the *Communitas totius Regni*, coming immediately after the Earls and Barons (as in our own Ancients Statutes and Records;) but after thoſe Reigns, we find no more mention of this *Communitas*, but only of the Dukes, Earls, Barons, *Liberi Tenentibus, & Burgenſibus, qui de Rege Tenent in Capite*, as in the Titles to thoſe Statutes of King *Robert* the Third, and *James* the Fifth, you have now cited.

And yet that *Liber Tenens* was not anciently taken for a Tenant *in Capite* only, pray ſee the 14*th Chap.* of the Laws of King *Alexander* the Second, made *Anno Dom.* 1214. with your Doctor's Comment upon them; *Statutum eſt*

quod

quod nec Epiſcopi, nec Abbates, nec Comites, nec aliqui liberi Tenentes, tenebunt curias ſuas niſi Vicecomes Regis, vel ſervientes Vicecomitis ibidem fuerant. B. A P. p. 98. Upon which Words, the Doctor in his Anſwer to Mr. *P.* hath this Remark, *viz.* This again ſhews us, that the Freeholders were Lords of Manors at leaſt. So that unleſs you will ſuppoſe that none but Tenants *in Capite* were Lords of Manors, or held Courts, (as certainly very many of the Meſne Tenants did) this Word *Liber Tenens* muſt extend to any other great Freeholder or Lord of a Manor, of whatſoever Lord he held it; and as ſuch might anciently have had a Vote in that Parliament. So that if I have (as I think ſufficiently) proved that the Word *Communitas* coming after the Earls and Barons, in our ancient Statutes and Records, did certainly ſignify another Order of Men diſtinct from the Tenants *in Capite*, I have the ſame Reaſon to believe it was ſo in *Scotland* too; not only becauſe theſe general Words *Communitas totius Regni*, muſt needs be more comprehenſive, than to expreſs the Tenant *in Capite* only, (who could never Repreſent all the great Freeholders in *Scotland* any more than they did in *England*) but alſo becauſe it is acknowledged by the *Scotch* Lawyers, that the Fundamental Laws and Conſtitutions are the ſame in both Kingdoms. For Sir *John Skene* in his Epiſtle to King *James* before his *Scotiſh* Laws, ſays thus, *Intelligo tuas tuorumque Majorum leges, cum legibus Regni tui Angliæ magna ex parte conſentiunt*; which is alſo acknowledged by the King himſelf in the Speech he made in Parliament concerning the Union of both Kingdoms.

To conclude, I cannot but admire your Doctor's ſtrange Partiality, who does allow the Commons of *Scotland* to have even been a Third Eſtate, when he expreſly grants, that, "*The Commons of* Scotland *were, and are at this Day,* "*the King's Tenants* in Capite; *and that the King's Royal Boroughs were ſuch* "*as ever did, and do at this Day in* Scotland, *only ſend Burgeſſes to Parliament*: Now why the Cities and Boroughs in *England* ſhould not have always had the like Privilege, as well as in *Scotland*, I wiſh you could give me any ſufficient Reaſon.

M. Since you own that the Tenants *in Capite*, or elſe Commiſſioners in their ſtead, have been the ſole Repreſentatives for the whole Kingdom of *Scotland* for above 200 Years, I doubt not but they were ſo, long before that Time; ſince you confeſs you cannot ſhew any Law by which this Ancient Cuſtom came to be changed; though I grant, that the Statutes before King *David* and *Robert* the Second, are ſaid to be made by the *Communitas totius Regni*, yet you muſt not ſuppoſe that Conſtitution of the Kingdom altered, when the Clerks altered their Phraſes in penning their Statutes and Records; ſo that this *Communitas* was the Community of the Tenants *in Capite* only, and not of the Freeholders, or of the Citizens and Burgeſſes of the whole Kingdom; ſince as for the former, you cannot ſay, that all the People in *Scotland* had ever a Right to chuſe the Commiſſioners for the Shires: For then 'tis moſt likely they would have kept it to this Day; whereas we ſee that none but Tenants *in Capite* have Votes at ſuch Elections.

And as for Cities and Boroughs, I cannot find (nor do I believe you can ſhew me) any Inſtance of a City or Borough-Town in *Scotland* that ever ſent Deputies to Parliament, but what held *in Capite* of the King. For though there are, as I ſaid already, beſides the Royal Burghs, two other ſorts, *viz.* Boroughs of Regality, and Boroughs of Barony, who hold of the King, but not *in Capite*, or elſe of ſome Biſhop or Temporal Lord; and though divers of theſe are conſiderable for Trade and Riches; yet none of them ſend any Burgeſſes to Parliament: So that though I confeſs there are Three Eſtates in the *Scotch* Parliament, called in the Statutes of King *David* and *Robert* the Second, the *Tres Communitates Regni*; yet did theſe always conſiſt of the Tenants *in Capite* only, who therefore ſit together and make but one Aſſembly.

Now that we may apply what hath been ſaid to *England*, I deſire you to take Notice, that the Doctor and we that are of his Opinion, do not poſitively affirm, that the Commons of *England* were not at all repreſented before 49 of *Henry* the Fourth, but that they were not repreſented in Parliament by Knights, Citizens, and Burgeſſes of their own Choice, but by the greater and leſſer Tenants *in Capite*, the greateſt part of which I grant were not Lords. And admit

that

that I ſhould grant you that ſome Cities and Boroughs ſent Members to Parliament, before the 49th of *Henry* the Third; yet were they only ſuch as held *in Capite*, and no other, as the Doctor has very well obſerv'd in his Anſwer to Mr. P's Argument from the Petition of the Town of St. *Albans*. So that upon the whole Matter, there will be no more gain'd by you in this Controverſy, than that perhaps ſome Citizens and Burgeſſes appeared in Parliament, and conſtituted a Third ſort of Men, which you may call the Commons, if you pleaſe, though I cannot find they were ſo called, till after the Time of *Edward* the Firſt. But ſuppoſing this to be ſo; it is very far from your Republican, levelling Opinion, who do ſuppoſe, that all the Freeholders of *England*, had an ancient indiſputable Right of appearing in Parliament by Reaſon of their Propriety in Lands, or other Eſtates. Whereas by our Hypotheſis, we ſuppoſe the Great Council or Parliament to have anciently been the King's Court-Baron, conſiſting of his immediate Tenants, call'd thither by him their Supreme Lord, to advertiſe him of the Grievances of the Nation; and to propoſe what new Laws were neceſſary for the Publick Good of the Commonweal; and together with him to raiſe ſuch publick Taxes, both upon themſelves and their Tenants, as the Neceſſities of the State required; yet notwithſtanding, there is a vaſt difference between your Notion and mine, concerning the Rights which ſuch Tenants *in Capite* might claim of coming to Parliament; ſince before King *John*'s Charter, (whereby I grant all the Leſſer Barons or Tenants *in Capite* were to be Summon'd by the Sheriff to come to the Common Council of the Kingdom) the King might have only call'd ſome of the greateſt and wiſeſt of them, and ſuch as he thought moſt fit to adviſe him in making Laws, and impoſing Taxes upon the Nation. And the like Prerogative his Son *Henry* the Third reſumed during the greater Part of his Reign, as I ſhall ſhew you from divers old Statutes by and by.

B. A. P. And that our Kings did often take upon them to call whom they pleaſed, and omit whom they pleaſed of theſe Tenants *in Capite*, may appear by thoſe who were called *Pares Baronum*, or *alios Magnates*, who are put after the Barons; and of theſe there are many Inſtances of their being called to Parliament, and again omitted in ſeveral King's Reigns after the Commons were a Third Eſtate, as repreſented as at this Day.

F. I muſt beg your Pardon, if I cannot come over to your Opinion, notwithſtanding what you now have ſaid; ſince I do not find your Reaſon to come up to what you intend therein; for you only ſuppoſe, (but without any Proof) that the Words *Populus* and *Communitas* muſt ſignify only Tenants *in Capite*, in the Ancient *Scotiſh* Charters and Statutes. All the Argument you bring to the contrary is, that I cannot ſhew you any Law by which it was altered to what it is now; and therefore, that the Conſtitution has been always the ſame as at this Day. Now pray conſider, whether this will not preſs altogether as hard upon in your relation to *England*; for you cannot ſhew me any Law whereby the Tenants *in Capite* were excluded here, and Knights of Shires introduced in their ſteads; and therefore, by the ſame Rule, let the *Scotiſh* Parliaments have been of what they will, yet ours have been ſtill the ſame they are now. But if you ſay, that this contrary Uſage hath been introduced, either by the King's Prerogative, or by the ſilent Conſent of the People; or by ſome Law that is now loſt, are not all the ſame Arguments to be made uſe of in the Caſe of the *Scotiſh* Parliaments: Which I may upon as good Grounds ſuppoſe to have deviated from their Original Conſtitution, as you do that our *Engliſh* Parliaments have done it.

So that if thoſe Arguments are of any weight, they will ſerve for *England*, as well as *Scotland*; but if they are not, it is in vain to make uſe of them at all. The like I may ſay, as to Boroughs in *Scotland*; ſince it is as eaſy to ſuppoſe, that divers Boroughs in *Scotland* might voluntarily deſiſt from ſending their Deputies to Parliament, that did not hold of the King *in Capite*; as it is, that divers Boroughs in *England* did Petition to be exempted from ſending Burgeſſes to Parliament, by reaſon of their Inability to pay the Expences of their Burgeſſes; as I could ſhew you by divers Precedents, (ſome of which are in Print) had I now Time.

As for the reſt of your Diſcourſe, I cannot imagine to what it tends; for if the Tenants *in Capite* had any Place in, or Right to come to Parliament, how came they to have it, but by reaſon of the great Freehold Eſtates they held of the King? And if ſo, I can ſee no Reaſon why thoſe that had as good or better Freehold Eſtates than they, ſhould be all excluded: Or why a ſmall Tenant *in Capite* of but one Knights Fee held of the King *in Capite*, ſhould give him a Right to a Place in Parliament; and yet that a Meſne Tenant, or *Vavaſour* (as he was then called) who held Ten Knights Fees of ſome Biſhop or Abbot, who perhaps did not hold *in Capite* at all, ſhould have no Right of appearing there, nor of chuſing any Repreſentative for him; ſince notwithſtanding all you have now ſaid, the Doctor either contradicts himſelf, or you, when he tells us expreſly in his Anſwer to Mr. *P.* "That the Te- "nants *in Capite* who were no Barons, repreſented only themſelves, and not "the Commons. But how will this agree with what he ſays in his Introduction, that the Body of the Commons had no ſhare in making Laws, *&c.* before the 49th of *Henry* the Third, unleſs they were repreſented by the Tenants *in Capite*? And if ſo muſt then certainly repreſent thoſe that he here calls the Body of the Commons of *England* collectively taken. *B. A. P. p. 68.*

But as for your Notion of the Parliament's being the King's Court Baron; tho' you have borrowed it of a learned *Scotch* Lawyer, Sir *George Mackenzy*, yet let me tell you it was never true; for it is well known that the Great or Common Councils both in *England* and *Scotland* are much more ancient than the Tenures of Lands by Knights Service; or than the very Inſtitution of Manors in this Kingdom, which the Doctor tells us are of no higher an Original than the *Norman* Conqueſt.

But admit I ſhould allow your Notion of the Parliament's being anciently the King's Court-Baron, then certainly all the Tenants *in Capite* had a Right to appear there, and to be not only Suitors, but Judges of all Differences ariſing among the Tenants in the Lords Court, where neither the Lord himſelf nor his Steward were Judges; and that of Right and not by Favour. Whereas you ſuppoſe ſuch a Court-Baron as never was heard of, where the Lord could admit or exclude whom of his Tenants he pleaſed, to which if they had a Right *ratione Tenuræ*, certainly he could never do. So that inſtead of a Court-Baron and a Common Council according to King *John*'s Charter, whereby all the Tenants *in Capite* were to be ſummoned to this Council, or pretended Court Baron; you ſuppoſe the King ſtill retained a Prerogative of calling or omiting whom he pleaſed; which inſtead of confirming the Validity of the Charter, and that it was to be a Rule how ſuch Councils ſhould be called for the future; you make to ſignify juſt nothing, and that no Common Council was ever called according to that Model. But pray ſhew me a Court-Baron, wherein the Tenants ever took upon themſelves a Power of giving Taxes out of their Eſtates, that did not hold of the Manor, though they were reſident within it. But indeed you are out in the whole Matter, for the Doctor himſelf grants in his Anſwer to Mr. P. when "he gives us "King *John*'s Letters of Summons to a Council directed to the Barons and "Knights (and as he tranſlates *Fidelibus*) Feudatories, or Vaſſals of all *England*, "wherein he lets them know, that he had ſent his Letters to every one of "them, if it might have been done". Now what Reaſon had he to write thus, if theſe Gentlemen had no Right to be conſulted, or that the King might have called or left out whom of them he pleaſed? But the Barons, or Tenants *in Capite* were of another mind, when in the 37th of King *Henry* the Third, as *Mat. Paris* tells us, they refuſed to Act or Proceed upon any Thing, without all the reſt of their Peers; divers of whom, it ſeems, the King had for ſome Reaſons then omitted to ſummon. *B. A. P. p. 40.*

But as for your Inſtance of the Barons, Peers, or *alios Magnates*, which were ſometimes ſummoned, and ſometimes omitted in the Reigns of our Three *Edwards*; you do well to put in, that it was after the Times that the Commons were a Third Eſtate; for indeed, it was only after that the Tenants *in Capite* had left off making a diſtinct Council by themſelves; which I ſuppoſe was about the End of the Reign of *Henry* the Third; and then it is true, the King called ſeveral of theſe Tenants *in Capite*, (as alſo others that were

were not ſo) by Writ, to the Houſe of Lords, as *Pares Baronum, i. e.* not as real Barons, but Baron-Peers, ſince a bare Summons by Writ did not as yet (nor long after) veſt a Peerage in their Heirs. So that upon the whole Matter, I ſee no Reaſon from any Thing you have urged from the Example of *Scotland*, to make me change my Opinion, that the Tenants *in Capite* were anciently the ſole Repreſentatives, either of this or that whole Nation in Parliament. For pray take Notice that I do not find the Tenants *in Capite* ſo much as mentioned in the ancient Statutes of that Kingdom, or Charters of their Kings, as the Common Council or Parliament of *Scotland*, before the Reign of King *Robert* the Third, which was but late in Compariſon of the Antiquity of thoſe Councils in that Kingdom.

M. I could ſay more as to the Antiquity of the Tenants *in Capite*, their coming to Parliament as the ſole Repreſentatives of the Nation, before the Time you mention; but it grows late, and therefore I ſhall wave it at preſent, and ſo ſhall only proceed to remark that great Part of the Error of the Gentlemen of your Opinion, proceeds from this falſe Ground, that you ſuppoſe that the Parliaments both of *England* and *Scotland* were a perfect Repreſentative Body of all the Freeholders and Freemen of thoſe Kingdoms; which is a meer Chimera. For in the firſt Place, if we will conſider, it never was, nor indeed is ſo at this Day; ſince you your ſelf muſt acknowledge, that all Copyholders and Leaſeholders under Forty Shillings a Year, all Freemen in Towns Corporate, where the Election lies wholly in the Mayor and Aldermen or Common Council; and laſtly, all that will not pay Scot and Lot in divers Borough Towns, are utterly excluded from giving their Votes in the Choice of Parliament Men; and conſequently from having any Repreſentatives in Parliament, though ſure as much Freemen as the reſt of the Kingdom: And this either by general Statutes, or elſe by the particular Charters and Cuſtoms of thoſe Cities, Towns and Boroughs; all which are looked upon as good and lawful Repreſentatives of thoſe Cities and Boroughs. So that I am clearly of the Doctor's Opinion, that the Tenants *in Capite*, as well thoſe who were Barons as thoſe that were not, only repreſented themſelves, and not the Commons, as being (as you truly obſerve) never choſen by the People. And as no Man can believe that a great Lord or Biſhop could repreſent his Meſne Tenants, ſo neither could the ſmaller Tenants *in Capite* who were no Barons, be properly ſaid to repreſent theirs; and yet, theſe might according to the Cuſtom of Feudal Tenures, and the Power they then had over their Tenants Eſtates, very well make Laws for them, and tax them at their Pleaſures, becauſe the main Intereſt and Strength of the Kingdom lay almoſt wholly in them; and theſe (as the Doctor very well obſerves) having the Power of this, or any other Nation *de facto*, always did make Laws for, and Tax the reſt of the People.

B. A. P. Pag. 68.

But to ſay ſomewhat to the Authorities you have brought from the County *Palatines* of *Cheſter* and *Durham*; I know not what old Privileges they might pretend to, of not being forced to give voluntary Aids or Subſidies of their moveable Goods without their Conſents; yet thus much I think may be made out, that as for all Land Taxes, and the general Laws and Statutes of the Kingdom, they were as much bound by the one, and as much liable to pay to the other, as the reſt of the Subjects of *England*; or elſe how came they afterwards to be bound by our general Statutes at all, as certainly they were from all Times ſince the Conqueſt; though *Cheſter* had no Repreſentatives in Parliament, till the Reign of *Henry* the Eighth, and *Durham* had none till our Times.

F. You Gentlemen who hold this general Notion of Tenants *in Capite*, are ſo intoxicated with it, that you do not care what Abſurdities or Contradictions you fall into, provided you may maintain your dear Opinion, as I ſhall ſhew you by and by: But firſt let me tell you, your Reply to what I have now ſaid, is very fallacious, and in ſome Points miſtaken as to the Matter of Fact: For in the firſt Place, I doubt not but our Common Councils or Parliaments were in the firſt Inſtitution, the main Body or Repreſentative of all the Freemen of the Nation; and though it came by long Continuance of Time to deviate from that Inſtitution; yet, that is to be attributed either

to

to ſome prevailing Cuſtom, or elſe poſitive Law to the contrary; for I think it evident, that in the *Saxon* Times, all the Freeholders of *England* had a Right of coming to Parliament in Perſon; and hence it is, that *Liber Tenens*, *Liber Homo & Ingenuus*, were Synonymous, and of the ſame Signification, as I have proved from Sir *Henry Spelman*'s Comment, in his Gloſſary upon thoſe Words. And hence it is, that the Members of thoſe Councils were ſo numerous as they were in thoſe Times, and long after, till they became ſo vaſt and unmanageable, that they were fain by Degrees to pitch upon this Method of ſending Knights of Shires to repreſent them; which is certainly a very ancient Inſtitution, ſince the Tenants in Ancient Demean, claimed to be exempted from the Expences of Knights of the Shires by Preſcription, as I ſhall ſhew you more particularly by and by; and likewiſe, ſince all Riches conſiſted in thoſe Days in Land, or elſe in Stock, or Trade; therefore the Cities and Boroughs, and Towns, by Reaſon of their Riches, had always a Share in the Legiſlative Power, as well as in giving of Taxes. And ſince all ſuch Citizens and Burgeſſes, not being able to come in Perſon, as the Freeholders could, were repreſented either by their chief Magiſtrates, called their Aldermen, or elſe by Burgeſſes of their own chuſing, as at this day; ſo that all Freedom, or Ingenuity being in this, as in all other Commonwealths, reckoned *per cenſum*, by the Eſtates of the Owners; our Common Councils were, and that truly, the Repreſentatives, not only of the Eſtates, but Perſons of all the Freemen of the Nation. For I am ſo far of the Doctor's Opinion, that the *Cheorl* Folk (as they were then termed) were little better than the *Scotch* Vaſſals, or *French* Peaſants at this Day, and ſo were not reckoned among the Freemen; all Freedom conſiſting then in ſo much Freehold Lands, held in a Man's own Right, or being Freemen of ſome City or Borough Town. And this gives us a Reaſon, why Copyholders and Tenants for Years, have no Vote in Parliament at this Day; ſince it is certain, (and all our Law-Books allow it) that at the firſt all Copyhold Eſtates were held by Villenage, and the Owners of them at firſt the *Villani*, or Tillers of the Demeſnes of the Lord of that Town; there being at firſt no Freehold leſs than that of a whole Townſhip, ſince a Manor; and therefore all Copy-holders and Tenants for Years, or at Will, though Freemen, are not admitted to have Votes at this Day, becauſe (as I ſaid before) Freedom anciently conſiſted in the Inheritance or Freehold Eſtate of Land, or in Riches in Trade or Traffick; Leaſes for Life and Years, being not commonly in Uſe in thoſe Days. And hence it is, that when Eſtates of Freehold came to be divided into ſmall Parcels, all Freeholders till the Statutes of *Henry* IV. and VI. (which we have before cited) were as much capable of giving their Votes at the Election of Knights of Shires, as the beſt and greateſt Tenants *in Capite* in *England*, till it was reduced by thoſe Statutes to 40 *s.* Freehold *per Annum*; theſe Freeholders and Burgeſſes of Towns being anciently looked upon in the Eye of the Law, as the only Freemen; and it was theſe Freeholders alone who owed Suit and Service to the County Court, and were amerced if they did not appear.

This being premiſed, and ſufficiently underſtood, will give us a very good Account, why Copy-holders and Leaſe-holders for Years do not give any Votes at Elections of Knights of Shires; and yet the Parliament may ſtill continue the Repreſentative of all the Freemen of the Nation; as the People of *Rome*, and the Territories about it were of all the *Romans*, though there were a great many *Liberti*, and in *Inquilini*, who ſure were Freemen, and not Slaves, and yet had no Votes in their *Comitiis Centuriatis*, or general Aſſemblies of all the *Roman* Citizens.

But that the *Liberi homines*, & *Libere Tenentes de Regno*, muſt take in more than your Tenants *in Capite*, the Doctor himſelf is at laſt forced to confeſs in his Gloſſary (notwithſtanding his maintaining the contrary in the Body of his Book) *viz.* that the *Liberi Homines*, & *Libere Tenentes*, mentioned in K. *John*'s *Magna Charta*, were not only the Tenants *in Capite*, but their Retinue, and Tenants in Military Service alſo, and whom he there ſuppoſes to have been then the only Men of Honour, Faith and Reputation, in the Kingdom; and if ſo, *Tit. Liberi Homines & Libere Ten.*

might certainly have been choſen Knights of Shires, as well as any of the Tenants *in Capite*; though this is but *Argumentum ad Hominem*; for the Truth is, that the Meſne Tenants by Military Service, were not the only Men of Faith and Honour in thoſe Times, ſince it is certain the King's Tenants in *Petyt Serjeanty*, and of ſome Honour or Caſtle, or elſe his Tenants in Soccage, beſides thoſe who held of other Meſne Lords, and the Tenants of thoſe Abbots and Priors who did not hold *in Capite*, and yet were very numerous, were Men of as much Faith and Honour as thoſe that did; ſince many of them poſſeſs'd as good, if not better Eſtates than the Tenants *in Capite* themſelves. So that you are certainly miſtaken in Matter of Fact, when you ſay the whole Force and Strength of the Nation lay in their Hands; for if you mean Legal Force, I have already proved, that the Tenants *in Capite* had no Legal Right to give away the Eſtates of their Meſne Tenants, or to make Laws for them without their Conſents, who were altogether as free as themſelves, *Servitiis ſuis debitis ſolummodo exceptis*, as *Bracton* tells us, much leſs for ſo great a Body of Men as I now mentioned, who never held of them at all, and conſequently could not upon your own Hypotheſis, be ever repreſented by them. But if you mean a Phyſical Strength or Force; though this can give no Natural, much leſs Legal Right for one Man to Lord it over another; yet even this was much farther from Truth, ſince the Meſne Tenants of all Sorts, as well by Military Service as in Soccage, together with thoſe above-mentioned, who never held of the Tenants *in Capite* at all, made Six Times a greater Body of Men, both for Numbers as well as Eſtates, than all the Tenants *in Capite* taken together.

But to conclude, neither is your Remark upon my Authorities from *Cheſter* and *Durham* at all to the Purpoſe; for I have ſufficiently proved, that thoſe County *Palatines*, were not at firſt concluded within the general Laws and Taxes of the Kingdom; ſince they had their particular Councils for both within themſelves; as the Supplication of the Eſtates of the County *Palatine* of *Cheſter*, ſufficiently declares; and certainly *Durham* had the like Privileges, ſince I never heard that the Men in that County were more Slaves to their Biſhop, than the *Cheſhire* Men to their Earl. And though I grant that about the confuſed Times of King *Henry* VI. there was a great Breach made on the Ancient Liberties of theſe Two Counties *Palatines*; and if the King and Parliament made Laws for, and Levied Taxes upon them, though they had no Repreſentatives therein, this proceeded partly from their being over-powered by the reſt of the Nation, and partly by the Eaſe they found in being excuſed from the Expences of Knights of Shires, and Burgeſſes, which all the reſt of the Kingdom was at that time liable to, and which came to a great deal of Money (Four Shillings *per diem*, being in thoſe Days, more than Forty Shillings now.) And yet you ſee at laſt they were aware of their Error, and at their Requeſt, got the Privilege of having Repreſentatives in Parliament of their own chuſing, as well as the reſt of the Kingdom. And if this had not been a Right claim'd by *Engliſh* Subjects, how came the *Welſh* Counties, which were anciently no part of the Kingdom of *England*, to have been admitted to chuſe one Knight for each County, and Burgeſſes for each Borough Town, as well in *North-Wales*, as *South-Wales*, though both theſe were Conquered Countries at the firſt, and incorporated to *England* by particular Statutes? And therefore we have no Reaſon to deny the Truth of *Bracton*'s and * *Forteſcue*'s Aſſertion, that no Laws are made, nor Taxes impoſed in *England*, *ſine conſenſu communi totius Regni*; or as the latter truly adds, *in Parliamento*; and certainly this Word common Aſſent muſt take in all their Aſſent[illegible] who had Eſtates either in Land, or other Riches, at that Time when this Law was Eſtabliſhed.

* *Vid. Forteſ. de Laud. Leg. Ang. Cap.* 36.

But leaving this Diſpute about *Scotland*, and the County *Palatines*, pray make an end (for it grows late) and give me the reſt of your Reaſons, why the Commons could not be repreſented in Parliament before the 49th of *Henry* III. and 18th of *Edward* I.

M. I will

M. I will proceed to do it, and for this End ſhall reduce my Arguments to theſe Five Heads. The Firſt is, ſome Writs found out and produced by the Doctor, whereby he proves that the Commons were not ſummoned during the Reign of *Henry* the Third, till the 49th. Secondly, The general Silence of all Statutes in *Henry* the Third's Reign; wherein is not one Word mentioned of the Commons, but rather to the contrary. Thirdly, The critical Time (*viz.* in the 49th of *Henry* the Third,) when the Commons were firſt called, during *Moniford*'s Rebellion. Fourthly, Their Diſcontinuance from that Time, till the 18th of *Edward* the Firſt, there being no Mention made of them in all the reſt of the Reign of *Henry* the Third, nor yet of *Edward* the Firſt, till the 18th; in which the Doctor ſhews you a Writ (not taken notice of before) by which the Commons were Summoned anew to Parliament: Laſtly, From the uncertainty of the manner of the Writs of Summons, whether for one Knight or Two Knights, and ſometimes no Citizens and Burgeſſes at all; which ſufficiently prove the Novelty of the Inſtitution, as alſo of ſome Parliamentary Forms relating to the Commons, which ſhew that neither their Number, nor Manner of Election, was ſettled long after the Reign of *Edward* the Firſt.

To begin therefore with the firſt Head. I know the Gentlemen of your Opinion make a great Noiſe about the loſs, or rather defect of the Writs of Summons, and Parliament Rolls of all the Kings, till the 23d or 25th of *Edward* the Firſt. So that we cannot be ſo well aſſured what was done in Parliaments of thoſe Times, as we may be afterwards. Yet there are ſtill ſome Writs of Summons extant upon the Cloſe Rolls before and in thoſe Times, by which the Biſhops, Earls, and Barons, were Summoned to Parliaments, or Great Councils. And we have all the Cloſe Rolls of King *John* and *Henry* the Third; on the *Dorſes* of which, anciently, moſt of the Writs of Summons to the Commons in other Kings Reigns, are entred (few on the Patent Rolls, which we have likewiſe.) 'Tis therefore very ſtrange, if the Commons were then repreſented by Knights, Citizens, and Burgeſſes, and Summoned to Parliament as at this Day, that there cannot be found any Summons to them upon theſe Rolls, as well as to the Lords. *B. A. P. p. 87. & dein.*

But the Learned Doctor hath, for our Satisfaction, found out Three Writs of Summons to the Lords, one in King *John*'s Reign, and two other of *Henry* the Third. The firſt is in the Cloſe Roll, 6th of King *John*, directed to the Biſhop of *Saliſbury*, which is needleſs here to be repeated *Verbatim*; only pray take Notice of the material Words of this Writ, where after the Cauſe of the Summons particularly expreſs'd, it concludes thus, *expedit habere veſtrum Conſilium & aliorum Magnatum Terræ noſtræ quos ad diem illum & locum facimus convocari.* The Second is in the Cloſe Roll of the 26th of *Henry* the Third, directed to *W.* Archbiſhop of *York*; wherein he is likewiſe Summoned *ad tractandum, Nobiſcum una cum cæteris Magnatibus noſtris quos ſimiliter fecimus convocari de arduis Negotiis noſtris ſtatum noſtrum & totius Regni noſtri ſpecialiter tangentibus*; with this Note underneath, *eodem modo Scribitur omnibus Epiſcopis, Abbatibus, Comitibus, & Baronibus.* *In fola. Hit. of Hen. 2 & 3. 217.* *M. 3. dorſo.* *M. 13. dorſo.*

The Third is of the 38th of the ſame King, directed to *Boniface*, Archbiſhop of *Canterbury*; whereby he is Summoned to be at *Weſtminſter* within Fifteen Days after *Hillary* next coming, before the Queen, and *Richard* Earl of *Cornwall*, about the Affairs of *Gaſcony*: And this very Council *Mat. Paris, Anno Dom.* 1254. calls a Parliament, to which all the *Magnates*, or Great Men of *England* came together; the Day of which Meeting he makes to have been the 6th of the Calends of *February*, being St. *Julian*'s Day, and which fell out within Fifteen Days after St. *Hillary*'s Day, which was that appointed for the Meeting of this Parliament by the aforeſaid Writ of Summons. And who were the Conſtituent Parts of this Parliament, may be farther made out by a Letter of the Queen, and Earl *Richard* to the King, then in *Gaſcony*, which is recited by *Mat. Paris*, in his *Additaments* in theſe Words; *Domino Regi Angliæ, &c. Regina & Richardus Comes Cornubiæ Salutem. Recipimus literas Veſtras ad Natale Domini proximæ præteritum quod in Craſtino Sancti* Hillarij *Convocaremus Archiepiſcopos, Epiſcopos, Abbates, Priores, Comites, & Regni Angliæ ad vſtendendum, &c.* Whereby it appears who were then the Conſtituent Parts or *Cl. 38. Hen. 3. M. 14. dorſ. de Magnatibus vocatis ad Concilium.* *B. A. P. Pag. 92, 93.* *Additament F. 189. N. 50.*

Members of our *Engliſh* Parliaments, *viz.* the Archbiſhops, Biſhops, *&c.* Earls, and Barons of the Kingdom. So that there is no ſuch Univerſal Silence concerning the Conſtituent Parts of our Parliaments, as you and thoſe of your Party ſuppoſe, from the Loſs of the Parliament Rolls of thoſe Times; moſt of which, though I confeſs are loſt; yet there are enough left to ſatisfy any reaſonable Perſon, that there were then no Commons in Parliament in the Senſe they are now taken.

F. You cannot give me a better Demonſtration of the Loſs of the Parliament Rolls and Writs of Summons, than what you now offer; for if we have all the Cloſe Rolls of King *John* and *Henry* the Third, on the *Dorſes* of which you tell me the Writs of Summons uſe to be entered; then certainly thoſe to the Lords were there enter'd alſo; and if ſo, how comes it to paſs, that in above Eighty Years Time, in which there muſt be above Eighty Parliaments, you can ſhew me but Three Writs of Summons, and thoſe only to as many Biſhops, and to no Temporal Lords at all? If ſo be theſe were Parliaments and not great Councils of the Biſhops, Lords, and Tenants *in Capite*, only, as I rather believe they were. For you rely too much upon your Doctor's Credit, when you alledge, that we have all the Cloſe Rolls of King *John* and *Henry* the Third; which is a great Miſtake; for I have had a Friend who has given me a Note of what Cloſe Rolls are ſtill Extant in thoſe Reigns, and what are loſt, which you may here ſee.

To begin with King *John*; pray obſerve, That all the Cloſe Rolls of the firſt Five Years of his Reign are gone; and ſo they are in the 9th, 10th, 11th, 12th, and 13th; for certainly, there were ſome in thoſe, as well as in the ſucceeding Years. In the next place, till the 18th, there is but one Roll left of each Year; but then there are Three; and after that, but one or two in a Year to the very end. Now pray tell me, how we can be aſſured, that there was not more then one Roll in every precedent Year, as well as in the 15th. The like I may ſay for the Reign of *Henry* the Third, which though I grant are more entire than thoſe of King *John*, there being ſome left us of every Year, but the 23d; yet they are but a few; and for the greateſt part but one in each Year; never but two in any Year in all this long Reign, unleſs it be the 39th, in which there are Four; which is very ſtrange, that in ſo buſy a Time, as moſt of this King's Reign was, there ſhould be no more Rolls left: And therefore it ſeems very probable, that at leaſt half are loſt, and in which might be many Summons, as well to the Commons, as to the Lords. And if they are not loſt, pray tell me what is become of all the Writs of Summons to your Leſſer Tenants *in Capite*, who certainly often met in this long Reign according to King *John*'s Charter. But if you will tell me, they are loſt, or omitted to be entred upon the Cloſe Rolls, I may with like Reaſon and Certainty affirm the ſame of the Writs of Summons to the Knights, Citizens, and Burgeſſes; for if the one may be loſt, ſure the other may be ſo too.

But what if after all, theſe Writs you have produced were not any Summons to a Common Council, or Parliament at all; but only to a Great Council of the Tenants *in Capite*? Which I have great Reaſon to believe, not only becauſe the Title to the laſt Writ is only *Summonitio ad Concilium*, and not *Commune Concilium Regni*; but alſo becauſe Mr. *Selden* and Mr. *Pryn*, who certainly muſt have ſeen all theſe Writs, as well as the Doctor, and were as able to judge of them, never cite them for Summons to Parliament; And Mr. *Pryn* obſerves of ſeveral Writs, in which the like Words of Summoning the Lords to give their Advice, are likewiſe found, that they were only to ſuch Councils, or *Colloquia*, or Treaties, which were frequently uſed as low as the Reign of *Richard* the Second. But if theſe Writs had been Summons to Parliament, ſure Mr. *Selden* and Mr. *Pryn* had no Reaſon to bewail (as they ſo often do) the Loſs of not only Parliament Rolls, but all Writs of Summons, both of Lords and Commons, (except thoſe of 49th *Henry* the Third,) till the 23d of *Edward* the Firſt. But pray go on, if you pleaſe, to make good the reſt of the Poſitions you have now laid down.

M. I doubt not but in the next place to ſhew (though 'tis true moſt of our Parliament Rolls are loſt) both from our Ancient Hiſtorians and Statutes, that there

there were no Commons in any Parliament, during all the long Reign of King *Henry* the Third, except in the 49th of that King.

I ſhall begin with the firſt Act of Parliament we have of the Time of *Henry* the Third, which was made in the 20th of this King, at *Merton*, where though it is ſaid, *To be provided and granted, as well by the Archbiſhops, Biſhops, Earls, Barons, as others*; yet the Words *& Aliis*, and others, are to be underſtood of the Tenants *in Capite*, diſtinct from the Earls, and Barons, as I have already proved.

F. I ſhall Anſwer your Authorities as you go. You may ſay you have proved it, but I know not when. And why may not I with as good a Face maintain, that theſe Words *& Aliis* do here ſignify the Commons; if the Word Barons muſt take in all the Great Lords and Leſſer Tenants *in Capite*, as ſometimes you ſuppoſe it doth, when no other Lay-Members are mentioned? But I have already obſerved, that this *Barones* is a Cheveral Word, and to be ſtretch'd, or contracted, as beſt ſuits with your Hypotheſis. So I think I may with greater Reaſon ſuppoſe the Earls and Barons, to be all comprehended under the Word *Barones*, and the Commons under *Aliis*, as I have already proved; and which is alſo moſt ſuitable to the laſt Clauſe of *Magna Charta* of King *Henry* the Third. But you forget that I have, I think, ſufficiently made out, that the Commons had their Repreſentatives, both at the making and confirming of *Magna Charta* in the 2d and 9th of *Henry* the Third; and therefore whatever Proofs you bring to the contrary, will come too late; though I ſhall patiently hear what you have to ſay. But if you have no more Authorities to produce from Statutes and Records, which have not been already conſidered, pray proceed to the 49th of this King's Reign, and give me ſome Reaſons why the Commons were called in that Year, and never before nor after, till the 18th of *Edward* the Firſt; for they both ſeem to be very improbable Suppoſitions.

M. I ſhall obſerve your Commands, and ſhall give you as ſhort an Account as I can of this Tranſaction. Firſt therefore, I deſire you to take Notice, That after *Simon Montfort*, and the reſt of the Barons of his Faction had taken King *Henry* the Third, and *Richard* Earl of *Cornwall*, the King's Brother, with many other of the Nobility, Priſoners at the Battel of *Lewes*; he carried them about with Him, till they had taken in all the ſtrong Forts and Caſtles of the Land; and when this was done, *Mat. Paris* tells us, that calling together at *London*, the Biſhops, Earls, and Barons of that Faction, which ſo ſeditiouſly held their King Priſoner; they began to ſet up a Committee for the Government of the Kingdom, conſiſting of Twelve Lords, who were choſen out of the whole Community or Body of the Baronage, without whoſe Advice and Conſent or at leaſt of Three of them, no Affairs in the King's Houſhold, or in the Kingdom, ſhould be tranſacted; and to theſe Ordinances, the King and his Son were forced to agree. And though the Record of this Agreement recites, that this Ordinance was made at *London*, by the Conſent, Good-liking, and Command of the King; and alſo of the *Prelates*, Barons, and of the Community there preſent; yet I am not convinc'd, that by the Word *Communitas* in the *Latin* Record, is to be underſtood the *Commons*, but the *Community* of the whole Kingdom; ſince this Agreement is Signed only by ſome Great Earls, and Barons, and no Commoner Witneſs to it, but the Mayor of *London*, whom your ſelf will grant was no Parliament Man.

B. A. P. p. 134. *& dein.*

Rot. Pat. 48. *Hen.* III. *M.* 6. *Dorſo.*

After which, *Simon Montfort*, the better to ſettle himſelf in his Uſurp'd Power; and in thoſe Lands and Caſtles which himſelf and thoſe of his Faction had unjuſtly wreſted from Prince *Edward*; who was now alſo a Priſoner, having delivered himſelf as a Hoſtage for the Performance of this forc'd Peace; they in the firſt place ſent out Writs in the King's Name, unto divers Biſhops, Abbots, and Priors, and to ſuch of the Noblemen as were of their own Party, to appear at *Weſtminſter*, on the Octaves of St. *Hillary* next enſuing; and the Doctor hath given us a Copy of the Writ of Summons to the Biſhop of *Durham*; as it is found in the Cloſe-Rolls of the 49th of this King; and at the end of it, it is thus recited, *eodem modo Mandatum eſt Epiſcopo Carleol.* As alſo to divers Biſhops, and Abbots, all of their own Party and Faction; there being above an Hundred Abbots and Priors then Summoned (more than were ever I believe, before or ſince); and then follows a ſhort Writ to the

B. A. P. pag. 137. *Rot. Claus.* 49. *Hen.* III. *M.* 11. *Dorſo, in Schedula.*

Sheriffs

Sheriffs of Counties, to Summon two Knights *de Legalioribus & Diſcretoribus ſingulorum Comitatuum*; though it doth not appear by the Writ, whether the Sheriffs of the Counties were to Elect, and ſend theſe Knights, the Sheriffs being then of the Faction, and made by them; for 'tis there ſaid, only *quod venire faciant*. There are alſo other Writs recited to have been directed to all the great Cities and Towns of *England*, as alſo to the *Cinque-Ports*, to ſend two of the moſt Legal and Diſcreet of each of the ſaid Cities, Boroughs, Towns, and Cinque-Ports, to the ſaid Parliament at *Weſtminſter*, at the Time aforeſaid. So that without the Hiſtory of this Nick of Time, theſe Writs (which are ſaid to be for the Delivery of the Prince out of Priſon, and for the ſettling of Tranquility and Peace in the Nation,) cannot be underſtood.

But Prince *Edward*'s Releaſe could not be agreed upon in this Parliament, whatever other Buſineſs might be diſpatched: So that Things ſtill remained in this uncertain Condition (the King being all this Time a meer Shadow) until ſuch Time as *Simon Montfort*, and *Gilbert de Clare*, Earl of *Glouceſter* falling out, the latter at laſt took up Arms, and joining with the Earls of *Surry* and *Pembroke*, to whom alſo came Prince *Edward*, after he had made his Eſcape from *Hereford*; they all together raiſed conſiderable Forces againſt *Montfort*, who meeting them, and joining Battel near *Eveſham*; *Montfort* with one of his Sons, and many other Lords and Knights were Slain, and all his Party routed.

Now pray tell me, if this is not a very clear Account from the Hiſtory of the matter of Fact, why the Commons were firſt called to Parliament by *Montfort* during his Rebellion. And I think I can alſo give you very good Reaſons (and Authorities to back them) why they were again diſcontinued all the reſt of this King's Reign, until the 18th of *Edward* the Firſt.

F. I ſhall tell you my Opinion of your Narrative by and by; but in the mean Time, pray ſatisfy me in one or two Queſtions: Pray Sir, what may be the Reaſon, that we can find but Twenty Three Earls and Barons Summoned, of that great Number there was then, and only Thirteen Biſhops in this Parliament; and yet at the ſame Time there ſhould be Summoned above an Hundred Abbots and Priors, and but Five Deans of Cathedral Churches; pray why might not theſe numerous Barons be truſted, as well as all the Abbots and Priors?

M. As for his not Summoning all the Earls, Barons, and Tenants *in Capite*, but putting Knights of Shires and Burgeſſes in their Rooms; there may be a very good Reaſon given for it, *viz.* the Danger that *Simon Monfort* and his Privado's apprehended from the too great Concourſe of the Nobility, and their great Retinues; and the Example of his own and the Barons Practices at *Oxford*, in the Parliament of the 42d of *Henry* the Third, might be the Cauſe why they altered the Ancient Uſage; and of their ſending Writs out, commanding the Sheriffs of each County, as alſo the Cities and Burghs to ſend two Knights, Citizens, and Burgeſſes reſpectively. But the Reaſon why there was ſo many Abbots and Priors Summoned, was, becauſe *Simon Monfort* thought himſelf ſure of them: He was a great Zealot, and a Godly Man in thoſe Times, and a great Minion of theſe Religious Men (as then called) as alſo of the Biſhops and Clergy; and they were at leaſt ſeemingly Great Favourites of his.

B. A. P. p. 143.

Ibid. 139.

F. I muſt confeſs there is ſome colour of Reaſon, why *Simon Montfort* ſhould Summon ſo many Abbots and Priors to this Parliament, if he were ſure of all their Votes before-hand; but there is no Certainty of this; for if he had been ſo ſure of them, there was as much Reaſon why he ſhould have called them all likewiſe to the Parliament at *London*, which you ſay he Summoned the Year before; when with the Conſents of the Biſhops, Barons, and others, he made the new Ordinances you mention: But you cannot find in any Hiſtorian or Record, that he then Summoned ſo many of them; and it ſeems pretty ſtrange, that all theſe Abbots and Priors, and Deans, not a fourth Part of which were Tenants *in Capite*, ſhould all take the Trouble to come to this Parliament without any Scruple; if neither they nor their Predeceſſors had ever been Summoned before.

But the other Reaſon you give why ſo many Earls and Barons ſhould be omitted, is much more unlikely; for if the numerous Barons factious Practices at *Oxford* had before fruſtrated *Montfort*'s Deſign, there had been indeed ſome Reaſon why he ſhould have done all he could to have hindred their coming again; whereas on the contrary, the Earls and Barons at the Parliament at *Oxford*, though they came thither with Arms and great Retinues, yet it was only to join him, and to force the King to agree to the *Oxford* Proviſions. But if the Commons were now ſummon'd (as you ſuppoſe) to curb the extravagant Power of the Lords, yet it could not be his Intereſt, or indeed in his Power ſo to do; not the latter, becauſe the Earls, Barons and Tenants *in Capite*, were too powerful and numerous a Body to have ſuffered ſuch an Affront and Breach on their Ancient Right, as this would have been. Nor could he and his Two and Twenty Companions, have ever dared to have diſpleaſed ſo great and powerful a Body of Men, as you muſt allow your great Barons, and Tenants *in Capite* both great and ſmall then were, and who made ſuch a powerful Oppoſition for their Liberties in King *John*'s Time; or that they would have thus tamely permitted Men wholly of the Sheriff's Choice, to have thus taken away their Places in Parliament, and made Laws for them, much leſs the Citizens and Burgeſſes, moſt of whom were certainly not Noble by Birth, nor yet held Lands *in Capite*. Nor could it be for *Montfort*'s Intereſt ſo to do: For the greateſt Part of the Earls and Barons were of his Side already, and thus to exclude them, had been the only way to diſoblige them, and make them leave him, and go over to the King's Side. So that I muſt needs tell you upon the whole Matter, granting *Montfort* to have been ſuch a Knave and Hypocrite as you make him, yet certainly he was no Fool, but a cunning Politician; and I leave it to your ſelf, or any indifferent Perſon, to judge whether it was poſſible for him to do ſo ſilly and unpolitick a Thing as this. For granting all the Abbots and Priors to have been of his Side, (as you ſuppoſe) they could no way counterbalance the great Power of thoſe Earls and Barons; and numerous Tenants *in Capite*, that were all hereby excluded. So that let the Commons have been Summoned when you will, it was certainly before this 49th of *Henry* the Third, or not at all.

But to give you my Opinion why ſo few Earls and Barons are mentioned in this Record of the 49th of *Henry* the Third, to have been Summon'd to this Parliament: I conceive it was not out of any Jealouſy or Suſpicion in *Simon Montfort* of thoſe who were then his faſt Friends, but out of pure Careleſneſs, or Omiſſion of the Clerks; who I ſuppoſe through Haſte, Inadvertency, or Multiplicity of Buſineſs omitted to enter the Names of all the reſt of the Earls, Biſhops and Barons, to whom Writs of Summons were likewiſe ſent. And that I do not ſpeak without Book, I appeal to the Record it ſelf; where there is a blank Space left unfill'd of about Four Inches Breadth, which could be left for no other End, than to add the Names of all the reſt of the Earls and Barons who were certainly Summoned to that Parliament, as well as thoſe whoſe Names are there expreſſed.

M. I ſhall not longer diſpute this Point, but I think you muſt grant that the Commons are never mentioned in any Record or Statute of this King; for after his Victory at *Eveſham*, he called a Parliament at *Wincheſter*, whereto we do not find any Commons Summoned, as before; but the King, by the Advice of his *Magnates* alone, Seized the Liberties of the City of *London*, and alſo they gave him all the Lands of the late Rebels.

And then there was after this a Parliament Summoned at *Kenelworth*, in the 50th of this King, where it was agreed by the common Aſſent of the Biſhops, Abbots, Priors, Earls, Barons, and *all others*, that Six Perſons, who were all (except one) either Biſhops or Barons, ſhould chuſe Six others, and the whole Twelve were to judge concerning thoſe who were diſinherited for their late Rebellion; and their Determination or Award, is call'd, *Dictum de Kenelworth*, and was made to better the Condition of the diſinherited, and to turn the Forfeitures and Loſs of their Eſtates into a Compoſition for them after the value of five years Purchaſe, to be paid at two or three ſhort Payments: Yet we do not find that to this Parliament the Commons were at all

Summoned, but the contrary; for though it is true that the Statute gives us all their Names who had a Hand in drawing up this Decree, yet the Doctor further proves to you from Sir *William Dugdale*'s Baronage, that there was not one of them, but what was either a Biſhop, or a great Baron of the Kingdom. Whereas had there been any Commons in this Parliament, they would certainly have had Commiſſioners of their own Order, as well as the Biſhops and Lords.

F. I ſhall give you a ſhort Anſwer to your Authorities from the Parliaments of *Wincheſter* and *Kenelworth*. As for the former, you muſt own that
B. A. P. p. 144. all the Rolls of it are loſt; and that there is no more left of it on Record than that Writ or Commiſſion which the Doctor has given us; which recites, That by the unanimous Conſent of all the *Magnatum*, or great Men (as the Doctor renders it) the King had the Seiſin and Poſſeſſion of all the Rebels Eſtates given to him. Which is no Argument to prove that no Commons were there; ſince I have ſo often made out, that under this Word *Magnatum*, not only the Knights of Shires, but Citizens and Burgeſſes were often comprehended. 'Tis true, there are no Writs extant, to prove the Commons were now Summoned; neither is there any Reaſon to believe the contrary; ſince if it were a cunning Invention of *Montfort* to Summon the Knights, Citizens and Burgeſſes, to abate the Power of the Tenants *in Capite*, it was ſure as good Policy for this King to continue ſo Politick an Inſtitution, which would for the future ſerve for ſo good a Balance, not only againſt his Tenants *in Capite*, but his great Lords too. For the Parliament at *Kenelworth*, I ſhall admit all the Matter of Fact to be true as you have related it from *Mat. Weſtminſter*, who ſays, that the Twelve Commiſſioners appointed to draw up the Statute of *Kenelworth*, were choſen *de Potentioribus Procerum, & Prudentioribus Prælatorum*; and alſo that the *French* Record (cited by the Doctor) together with Sir *William Dugdale's* Comment upon it, make it out plain enough, that the Lay Commiſſioners who were choſen by all the Parties there named, to make this Statute, were all great Earls and Barons, though in the Record it ſelf only ſtil'd Knights.

Well, what follows from all this? That the Commons could have no hand in this Choice, becauſe the *tous Autres*, or *omnes Alij*, mentioned in this, and other Records, muſt needs always ſignify the ſmaller ſort of Tenants *in Capite*; and I ſay it ſignifies the Commons as now taken. Whether you have made good your Interpretation by any cogent Proofs, I muſt leave to your own Ingenuity; for to tell you the Truth, I think your Doctor has led you aſtray in this Point; and till you can make it out better than you have done, I muſt beg your Pardon if I keep my old Opinion. And if your Argument be good, that no Commoners were there, becauſe none of them were choſen Commiſſioners, then by the ſame Argument none of the ſmall Tenants *in Capite* were there neither; becauſe none under the Degree of an Earl or Baron were Elected. As for the want of Writs of Summons to theſe Parliaments, if that were to be the Rule, that makes as much againſt the reſt of the Tenants *in Capite*, who were no Barons; nay, the very Biſhops, Abbots, and Lords; ſince there is no Writs of Summons found for their Appearance at either of theſe Parliaments; and ſo the King might call whom he pleaſed.

M. In the Firſt Place, It does not follow that becauſe *Montfort* had Summoned ſome of the Tenants *in Capite* to appear for all the reſt; and that he alſo called ſome Citizens and Burgeſſes to this Parliament of the 49th, yet the King might have very good Reaſons (though we cannot now poſitively tell what they were,) not to follow this new Invention of *Montfort*'s, however it might then ſerve the Turn; for perhaps the King did not like it, becauſe introduced by a Rebel. And he had alſo by his Victory at *Eveſham*, ſo quelled the Power of the great Lords, and Tenants *in Capite*, that I believe he was afterwards able to call or omit whom of them he pleaſed, according to the Teſtimony of Mr. *Cambden*'s Nameleſs Manuſcript Author, cited in his *Britannia*; that after the horrid Troubles and Confuſions of the Barons Wars, only thoſe Earls and Barons, *Quibus Rex dignatus eſt brevia Summonitionis dirigere venirent ad Parliamentum ſuum, & non Alii.*

And

And that this was true in Matter of Fact, I ſhall prove from the next Statute of *Henry* the Third, which is extant, *viz.* that of *Marlbridge*, made in the 52*d* Year of this King, to which there were no more Summoned than ſome of the more *Diſcreet* of the *Greater* and *Leſſer Barons*, as appears by theſe Words in the Preface to that Statute, *Convocatis Diſcretioribus ejuſdem Regni tam Majoribus quam Minoribus, Proviſum eſt, & Statutum ac concordatum*, &c. which ſeems to have been done by the King's particular Direction; ſince by the general Writ of Summons provided by King *John*'s Charter, the Sheriff of each County was to Summon all the Minor Barons, and Tenants *in Capite*; which could not be, if only the more Diſcreet were then Summoned; nor is there in this Preamble, the leaſt Hint or Intimation of any Writs directed to Counties, Cities or Burghs, for the Choice of Members. *B. A. P.* p. 144, 145.

I deſire you in the next Place to take Notice, that *Briton* (who lived about that Time) ſuppoſes this Statute to have been made, *Per la Purveance de Robert Walerand & per Commune Aſſent des Grauns Seigneurs du Realme*; by the Procurement or Forecaſt of *Robert Walerand*, and by common Aſſent of the Great Lords of the Realm, without any Mention of the Commons. I have a great many more ſuch Statutes to Inſtance in, which are ſaid by *M. Paris* to have been made in ſeveral Parliaments of this King, by the *Community*, or *Common Univerſity* or *Baronage* of the whole Kingdom; but I paſs them by, becauſe we have ſufficiently debated moſt of them already. *B. A. P.* p. 95.

F. If only ſome of your Great Lords, and Tenants *in Capite*, could thus meet, and make Laws to bind all the reſt, and they ſo tamely put up this ſtrange Infringement of their Privileges, as you ſuppoſe, it ſeems their Power was much abated ſince the 37th Year of this King, when (as I ſaid) *Mat. Paris* tells us, that the Barons would do *nothing without* the reſt of their Peers, whom it ſeems the King had then omitted to Summon; and therefore I muſt needs tell you, that I am not of your Doctor's Opinion, nor yet of *Cambden*'s Nameleſs Author, that this King, after his Victory over *Montford* and his Adherents, could by his Prerogative call, or omit what Peers he pleaſed; ſince it is contrary to the Declaration of all the Biſhops, Abbots, and Priors in full Parliament, in the Second of *Richard* II. wherein they claimed, "That holding *per Baronium*, it did belong to them, *de Jure & conſuetudine* "*Regni Angliæ* (that is, by Rights of Preſcription) to be preſent in all Parli- "aments as Peers of the Realm, and to treat, conſult and ordain concerning the "Affairs of the Kingdom. And if the Spiritual Lords claimed this Privilege, ſure the Temporal Barons might with the like Right have made the like Claim; and I am ſure it is highly derogatory to the Rights of the Peerage of *England* to maintain that the King either hath, or ever had the Power of calling and leaving out what Lords he pleaſed, and ſo to make pack'd Parliaments to ſerve a Turn whenever he pleaſes.

See p. 337. This is advanced upon no warrant of the Hiſtorian.

Ibid. *Sir R. Cotton's Collection of Records in this Year.*

But to come to the main Strength of your Argument, that becauſe the more *Diſcreet Men* of the Kingdom *of the Greater* as well *of the Leſſer*, are only mentioned in this Statute, that therefore there were only called to it ſuch Lords, and Tenants *in Capite*, as the King pleaſed to Summon, and that all the reſt were left out; which is a very idle Suppoſition; for at this rate, I may as well ſay, that there were no Temporal Barons there at all, and that by the *Greater Diſcreet Men* are to be underſtood ſome of the Biſhops and Judges; who, though no Peers, yet were then the moſt Learned in the Laws and Cuſtoms of the Kingdom, of any Perſons at that Time, and conſequently the *moſt Wiſe and Diſcreet* to draw up Laws; and by the leſſer Sort of Diſcreet Men, ſhall be underſtood ſuch *Great Clerks* and *Lawyers*, though not Tenants *in Capite*, as the King pleaſed to chuſe, as being likewiſe moſt able to adviſe him. But if you tell me that this Interpretation is forced; I may as well ſay the ſame of yours, and that with greater Reaſon. Yet I ſhall prove that this Parliament was Summoned in no other Manner, and conſiſted of no other Perſons than thoſe that uſed to appear in all other preceding Great Councils or Parliaments.

In the Firſt Place, therefore, I muſt put you in Mind of what I have already ſaid, that there is no Concluſion to be drawn from the bare penning of the different Forms of ancient Statutes, who were Summoned to the making

of them, nor by what Power they were Enacted; ſome of them, *it is true*, being drawn in the Form of the King's Charters, or Writs; without any Mention of the Aſſent either of the Lords or Commons; and others are ſaid to be Enacted by the whole Realm, without any Mention of the King at all; and I have given you a Liſt of divers old Statutes from the Reign of King *Henry* the Third, to the Time of King *Edward* the Third, in which there is no Mention at all made, either of the King, or any other of the Three Eſtates; and yet no Man, I think, but will grant that theſe Statutes were all made, and agreed to by them, according to the uſual Forms, though it be not particularly expreſſed. And therefore to give a better Account of this Law, it is fit we conſider, that theſe Words *convocatis Diſcretioribus Regni*, are no more reſtrictive to ſome particular Perſons, than if it had been in the Superlative Degree, inſtead of *Diſcretioribus*, it had been *Diſcretiſſimis*, or *Sapientiſſimis Regni*, which no Man would interpret to mean only a few of thoſe whom the King ſhould judge the wiſeſt and moſt diſcreet Men of the whole Kingdom; and therefore we muſt not mind the *Grammatical*, but Legal Senſe of theſe Words; and then it amounts to more than this, that by the *Greater Diſcreet Men*, were meant the Lords Spiritual and Temporal, as under the Leſſer *Diſcreet Men* were included the Commons.

But that theſe *Minores Diſcreti*, cannot be underſtood of the Tenants *in Capite* only, appears by the Concluſion of the *Preface* to this Statute of *Marlbridge*, in theſe Words: *Proviſiones, Ordinationes, & Statuta ſubſcripta ab omnibus Regni ipſius incolis, tam Majoribus, quam Minoribus, firmiter & inviolabiliter temporibus perpetuis Statuerit obſervari*; ſo that if by the *Majores Incolæ*, who were to obſeve theſe Statutes, the Lords Spiritual and Temporal are meant, then by the *Minores Incolæ Regni*, muſt be underſtood for the ſame Reaſon, the whole Commons of *England*; and ſo likewiſe by Parity of Reaſon, by the *Minores Diſcreti*, mentioned before in the *Preface*, muſt be alſo meant the Repreſentatives of the Commons in Parliament.

And that this alone can be the genuine Senſe of theſe Words, may appear, by comparing this Statute with another made at *Glouceſter*, the 6th of *Edward* the Firſt; where in the *Preface* it is recited in theſe Words, *purvenant meſm le Roy, pur Amendement de ſon Royalme, & pur pluis plenier exhibicion de droit ſicome le profit d' office demande, appelles les plais Diſcretes de ſon Royalme auxibien des Greindres, come des meindres, eſtablie eſt, & acordantment ordeine.* So that if the Commons were there called to this Parliament, and if by the *Greindres Diſcretes*, were underſtood the Lords, then by the like Reaſon under *Meindres Diſcretes* muſt be meant the Commons, as at this Day.

But that this Statute was made by the Common-Council of the Kingdom, and not by a Conventicle of a few of the Lords and Tenants *in Capite*, Summoned *ad Libitum Regis*, appears by all the Original Writs, founded upon ſeveral Branches of this Statute, which are to be ſeen in the Regiſter; reciting that this Statute was made *de Communi Concilio Regni*. Now the Word *Commune* ſignifies no more than General; and how could this be call'd a General Council, which only conſiſted of a few of the wiſer Sort of Biſhops, Lords, and Tenants *in Capite*.

Fol. 171, 174, 175.

As for what you and the Doctor cite out of *Cambden*'s Nameleſs Author, of King *Henry*'s ſending Writs of Summons, and culling out a few of the Earls and Barons out of a great Multitude that were Seditious, after the War with the Barons was ended; if you will have it extend to thoſe who never forfeited by reaſon of *Monſort*'s Rebellion, I need not ſay much to it, ſince Mr. *Selden*, in his Titles of Honour, hath ſufficiently baffled that Author's Authority; for if it was never true as to Earls, it was not like to be truer in reſpect of the greater Barons. But as for your leſſer Barons, or Tenants *in Capite*, I know not but he might be much more in the right, in reſpect of them.

Fol. 590.

What you ſay as to *Robert Walrand*, is not much material; for though he was never ſo great a Baron or Lawyer, yet he could draw up this Law but as being one of the King's Council, who in thoſe Days drew up, and prepared all Bills that were offered in Parliament. And thus *Briton* might well ſay,

that this was made by the *Common Aſſent* of the Great Lords, (this Act being ſo highly for their Advantage) and yet the Commons might be alſo there as well as they; for otherwiſe, if *Briton* muſt be literally underſtood, what becomes of your *Minores Diſcreti* mentioned in this Statute to have given their Conſents, as well as the *Majores*? whereas this Author mentions none, at whoſe Requeſt it was made, but the Great Lords only. But that by theſe *Minores Incolæ Regni*, mentioned at the end of this Statute, were meant the Knights, Citizens, and Burgeſſes, pray ſee a Writ of Summons the 24th of *Edward* the Firſt, with the Doctor's Note upon it, in his Anſwer to Mr. P. The Writ is directed to the Archbiſhop of *Canterbury*; and concludes thus, that he ſhould warn the *Procuratores Cleri* there mentioned, to appear with him, *ad tractandum, ordinandum & faciendum nobiſcum, & cum ceteris Prælatis, & Proceribus, & Alijs, Incolis Regni noſtri*; in the Margin over-againſt theſe laſt Words, the Doctor gives us this Note, the *Incolæ Regni* were the Knights, Citizens and Burgeſſes mentioned in the former Writ, but not here particularly enumerated. Now, though it is true, that this Writ is after the Time that the Doctor will acknowledge the Commons to have been conſtantly Summoned to Parliament; yet if theſe Words could mean the Commons in this Writ, why they ſhould not ſignify the ſame in this Statute, I can ſee no Reaſon, but the Doctor's Prejudices to the contrary. But if you have no more Authority to alledge from the Reign of *Henry* the Third, pray go on, and ſhew me the reſt of your Arguments, why you ſuppoſe the Commons were never called in above half the Reign of *Edward* the Firſt, till the 18th. And I deſire this the more, becauſe as I have already proved from the Statute of *Weſt.* 1. 3d of *Edward* the Firſt, the Words, *& tout le Communalty de la Terre*, coming immediately after the Counts, Barons, and thoſe other Words foregoing, muſt needs ſignify the whole *Commonalty*, or Commons of the Land; and ſo the Doctor himſelf has rendered it in his Anſwer to Mr. P.

Rot. Cl. M. 4. *Dorſo.* *B. A. P.* p. 135.

B. A. P. p. 146.

M. But firſt, pray obſerve what the Doctor there tells you, that by the Word *Commonalty*, he means not the Commons in the Senſe they are now taken, but the Community of the Tenants *in Capite* only: And for this, pray conſult the Writ of Summons to the Archbiſhop of *Canterbury* to come to this Parliament, (which I confeſs is the only Writ of this kind that is left upon the Rolls from the 49th of *Henry* the Third, to the 23d of this King) in which you will find the Archbiſhop Summoned *ad tractandum, ordinandum una cum Prelatis, & magnatibus Regni*; that is, as the Doctor explains it, with the Prelates and Great Men of the Kingdom; which Great Men very frequently comprehended, as well the Barons *Majores* as *Minores*, the Earls, Barons, and greater Tenants *in Capite*, and the leſs, which then were the Community of the Kingdom; ſo that your Interpretation of the Words *des Greindres, & des Meindres* in the Statute of *Glouceſter* (by which you would interpret the like Words in the Statute of *Marlbridge*) for the Commons, as now underſtood, will ſignify nothing, as being before the Time we allow the Commons to have been Summoned to Parliament in this King's Reign.

Clauſ. 3. *Ed.* 1. *in* 1. *die veniendo ad Parliamentum.*

Ibid. p. 147.

F. It were a very eaſy thing for any Man of a confident undertaking Temper, to frame what Interpretation he pleaſes, from the general or equivocal Words of Hiſtories or Records, if he could as eaſily find Authorities to ſupport it; but I ſee nothing like a Proof for it, but the Doctor's bare Aſſertion: Since I have already ſufficiently proved, that the Words *Communalty* and *Communitas* coming in our Statutes and Records immediately after the Counts and Barons, do always ſignify the Commons, as now underſtood; and why they ſhould not ſignify ſo here, I can ſee no Reaſon. For as to the Words in the Writ to the Archbiſhop of *Canterbury*, they prove nothing at all, who were the Conſtituent Parts of that Parliament; for if the Word *Magnates* muſt needs ſignify the greater and leſſer Tenants *in Capite* only, pray why do they not ſignify ſo in the Writ of Summons to Parliament, of the 49th of *Henry* the Third, to the Biſhop of *Durham* (which the Doctor has Printed) where there is no mention made of his Treating or Adviſing with any other Perſons, than the other Prelates, *& Magnatibus noſtris*? Yet the Doctor, within two Leaves after, gives us the Writs of Summons for the Knights, Citizens, and Burgeſſes to this Parliament. But it ſeems in his firſt Edition of his Book againſt Mr. P.

Cl. 49. *H.* 3. *M.* 11. *Dorſo.*

B. A. P. p. 147.

he had not made those rare Discoveries he did afterwards; where he pretends not to carry this Opinion beyond the 49th of *Henry* the Third. Therefore pray go on to shew this new Light, by which the Doctor discovered that the Commons were never Summoned to Parliament all the Reign of *Edward* the First, till the 18th.

M. In the first place, you cannot shew us any mention of the Words Communalty, or *Communitas*, in any of the Parliaments of this King's Reign; not in the Statute *de Bigamis* made in the 4th of this King; the Preamble thereof runs to this effect; That these Underwritten Constitutions were recited before some of the Bishops and others of the King's Council, and afterwards heard and published before the King and his Council; here is no express mention, who were the Constituent Members of Parliament at this Time, or of this Parliament in particular, more than that it is said, in the Close of this Statute, that the aforesaid Constitutions were Published at *Westminster*, in the Parliament after the Feast of St. *Michael*.

B. A P. Pag. 147, 148.

So likewise by the Statute of *Westminster* the 2d, made in the 13th of *Edward* the First, it appears, that the Prelates, Earls, Barons, and the King's Council, were the Constituent Parts of the Parliament at *Glouceſter* you but now mentioned; for it recites, that the King, in the 6th Year of his Reign, *Convocatis Prelatis, Comitibus, Baronibus, & Concilio ſuo apud Gloceſtre*, &c. And thus the Statute of *Mortmain* made by this King in the 7th of his Reign, is recited to have been made *de Conſilio Prelatorum, Comitum, Baronum, & aliorum fidelium Regni noſtri de Concilio noſtro exiſtentium*, &c. The Statute of *Acton Burnel*, was made in the 11th of this King, by himself and his whole Council, *Le Roy per Luy, & per tout ſon Council ad ordein & eſtablie*; though this was done in Parliament, as appears by the Statute of Merchants of the 13th of the same King, which recites, that the King had made by himself and his Council at his Parliament at *Acton Burnel* these Establishments. I have been the more particular in the recital of these Statutes, not only because here is no mention made of any Commons in these Parliaments; but also because it farther confutes your Position in your 5th Dialogue, that the King had not then the sole Legislative Power.

F. You have said almost nothing now (I except that of the King's being the sole Legislative Power,) which I have not already, freely acknowledged, *viz.* that the Words *Communitas*, and Communalty, are not above twice mentioned in the enacting part of any Statute in this King's Reign; and the Knights, Citizens, and Burgesses not once mentioned, till the 34th of this King; nor any mention again of the Commonalty, till the Statute of *Lincoln*, made in the 12th of *Edward* the Second; and yet it appears by the Writs of Summons and Expences, beginning at the 28th of *Edward* the First, that the Commons had been Summoned to Parliaments ever since that Time; and that they were so also before that Time, I have already proved both by Acts of Parliament and Records; and it would be a very uncertain Constitution, if we should suppose the Representatives of the Nation, in the Great Council or Parliament, to alter as often as the Words or Phrases whereby they are expressed. But by yours, and your Doctor's Method of Arguing, if the Writs of Summons to the Commons of the 49th of *Henry* the Third, had happened to have been torn off, and lost, as they easily might have been; since it is only affix'd to the Roll by a loose Schedule; and also, that all the Writs of Summons to the Commons had been lost, from the 23d of *Edward* the First, to the 34th, when there is no denying the Commons to have been there, because particularly named; and if these Writs had also happened afterwards to have been lost, till the 12th of *Edward* the Second, when they are expresly named in the Statute of *Lincoln*, which I now mentioned: Then the Commons should have been as well excluded by the same Argument, as they are after the 49th of *Henry* the Third, by the Doctor and those of his Opinion, because no Writs of Summons are found for them, nor any mention made of them in any Statute, first for above Thirty Years, and after that for above Thirteen Years together; since you will not allow the Words *Communitas* and *Communalty* to signify the Commons, till you please to take them in that Sense.

This

This may ſerve as a general Anſwer to all you have ſaid concerning the Omiſſion of the Commons in all Statutes, till the 18th of this King, and may ſerve not only for them, but againſt the Biſhops and Tenants *in Capite*; being all preſent at divers Parliaments, where the Acts are recited to have been made by the *common Aſſent or Accord*, without at all ſpecifying whoſe Aſſent, and ſometimes without naming the King at all.

This being premiſed, it will be eaſy to return you a ſhort and particular Anſwer to the Statutes you have cited. As for that *de Bigamis*, you confeſs that the Statute only mentions its being recited before the King's Council, and publiſh'd in Parliament, without relating what were the conſtituent Parts of it; *Ergo*, no Commons were there; and I may, with as good a Face ſay, no Biſhops, Abbots, nor your ſmaller Tenants *in Capite* were there, becauſe not particularly named. As for the reſt of the Statutes you have cited, of *Glouceſter*, *Mortmain*, and *Acton Burnel*; 'tis true, the Prelates, Earls, and Barons are there only particularly mentioned, becauſe they then bore the greateſt Figure in the Government, your Leſſer Tenants *in Capite* being quite left out; for that they could not then be comprehended under *Baronum*, I have ſufficiently made out. But to conclude, give me any ſufficient Reaſon, why the Commons might not be at theſe Parliaments, as well as they were in the 18th of this King; tho' moſt commonly no otherwiſe mentioned than they were before that Time. If you ſay the Writs of Summons make it out they were there, you confeſs your Prejudice; ſince the two Writs of Summons before that Time would, if they had not been loſt, have made out the ſame Thing.

As for what you ſay for the King's being the ſole Legiſlative Power in thoſe Times, I have long ſince proved, that no King could ever legally make Laws, without the Conſent of the Common Council, or Parliament; and after that, all that you can ſay for the King's making Laws alone, with the Advice of his Council, ſignifies nothing: For if the Words are literally to be underſtood, then this Council of the King, whether you will have it to conſiſt of the whole Parliament, as the Statute of *Mortmain* ſeems to intimate, or elſe of his particular Council in Parliament, as in the Statute of *Acton Burnel*, where thoſe Conſtitutions are ſaid to be ordained by the King and his Council; if by ordain'd, you mean only drawn up, and prepared for the Parliaments Aſſent, it is no more than what I ſhall eaſily grant to have been the uſage in thoſe Times: But if you will have ordained to ſignify *enacted*, then pray tell me how you will avoid the King's Council having a joint Hand with the King in his Legiſlative Power; ſince the Words are, the King *by himſelf and his Council had Ordered and Eſtabliſhed*. But you have carried both your ſelf as well as me, too far from the main Queſtion; therefore, pray give me ſome better Reaſons why you are of this Opinion, That the Commons were not Summoned again to Parliament, till the 18th of *Edward* the Firſt.

M. I am now coming to it: But firſt remember, that about an Hour or two ago, I cited a Record of the 30th of *Edward* the Firſt, which related to an Act of the 18th of this King: By which Record it appears, that the Prelates, Earls, Barons, and other great Men of the Kingdom, had then in full Parliament on the firſt of *June*, granted him 40 *s.* on every Knights Fee, to marry his Daughter: And it thence alſo appears, that tho' this Tax is ſaid to be given for themſelves and the whole Community of the Kingdom; yet it was by the Community of Tenants *in Capite* alone, becauſe it was to be raiſed wholly upon Knights Fees; ſo that hitherto in this King's Reign, there appears nothing that can plainly evince, either the Summoning, or being of any Commons in Parliament, as now underſtood; however, we are at leaſt left at great uncertainties; nay, in my Opinion, the Proof is more ſtrong on the Negative, that there were none. *B. A. P. Pag.* 149.

F. I wonder you ſhould mention this Writ any more; ſince I have already confuted the Doctor's Notion about it; and proved, that it was a general Tax granted by the Parliament upon the whole Kingdom, and not laid, either by or upon the Community of the Tenants *in Capite* alone; nor does the way of Taxing by 40 *s.* upon every Knights Fee at all prove it: For if it is to be underſtood of Lands only held by Knights Service, then this Tax could not have extended to any other Eſtates, as certainly it did; ſince the King could, by King

John's

John's Charter have made his Tenants *in Capite* to grant him an Aid towards this Marriage of his Daughter; and (if what you ſay be true) could alſo have made all the Meſne Tenants of the Tenants *in Capite*, to have contributed to it according to the Knights Fees they held; and this without calling a Parliament at all; therefore pray give ſome better Authority than this; for I'll aſſure you, I am not at all ſatisfied with it.

B. A. F. p. 149. *& dein.*

M. I will now give you the Writ the Doctor has diſcovered, and by which it will plainly appear, that this Tax granted in the 18th of this King's Reign was given before ever the Commons were Summoned to it; and for this, the Learned Doctor has found out, (among a looſe Bundle of Writs of this Year,) a Writ of Summons, directed to the Sheriffs of moſt Counties of *England*; and they are the ancienteſt extant, or perhaps that ever were (for in probability, the calling of Knights, Citizens, and Burgeſſes, according to that Example, was diſcontinued from the 49th of *Henry* the Third, unto this Time) by which two or three Knights were directed to be choſen for each County: Pray read the Writ it ſelf; ſince I look upon it as the firſt Pattern of this kind; that of the 49th of *Henry* the Third, ſeeming to have been written in Haſte, without thoſe Forms that were afterwards required in Writs of this kind, and particularly in this: *Edwardus Dei Gratiâ Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ Vice-comiti Weſtmerlandiæ Salutem. Cum per Comites, Barones & quoſdam alios de Proceribus Regni Noſtri, nuper fuiſſemus ſuper quibuſdam Specialiter requiſiti, ſuper quibus, tam cum ipſis, quam cum aliis de Comitatibus Regni illius* Colloquium *habere volumus &* Tractatum, *tibi præcipimus quod duos, vel tres de Diſcretioribus, & ad laborandum potentioribus Militibus de Comitatu prædicto ſine delatione Eligi, & eos ad nos uſque Weſtmonaſterium venire facias ita quod ſint ibidem à die Sancti* Johannis Bapt. *prox. futur. in tres Septimanes* ad ultimum *cum plena poteſtate pro ſe, & Communitate Comitat. prædicti ad conſulendum, & conſentiendum pro ſe &* Communitate *illâ his quæ Comites, Barones, & Procæres prædicti, tunc dixerint concordanda, & habeas ibi hoc Breve. Teſte meipſo apud Weſtmonaſt.* 14. *Die* Jun. *Anno Regni Noſtri* 18.

Whereby you may ſee in the firſt place, that there was yet no certain Number of Knights of Shires ſettled, who were to be Summoned to appear at this Parliament. And you may, in the next place remember from a before-mentioned Record of the 30th of *Edward* the Firſt, That on the firſt of this Month, the King had Scutage then given him in full Parliament: And now Fourteen Days after, at the Inſtance of the Earls, Barons, and other Great Men of the Kingdom, upon certain matters by them moved and propounded to him, he iſſued His Writs of Summons to the Sheriffs of the ſeveral Counties, to cauſe to be choſen two or three Knights of each County, to come to him at *Weſtminſter*, three Weeks after St *John Baptiſt* at fartheſt. We may alſo further obſerve from this Writ, that it is moſt probable (though it is not here abſolutely ſaid ſo) that the King was moved by the Earls, Barons, and great Men of the Kingdom, to call theſe Knights to this Parliament; and that as this Writ is the firſt to be found after that of the 49th of *Henry* the Third; ſo I take it to be the firſt Writ of Summons after that Time, for the Election of Knights to repreſent the ſeveral Counties.

In the next place, that there could be no Citizens nor Burgeſſes choſen, or ſent to this Parliament by virtue of this Writ, in the ſame manner as they were afterwards by Directions contained in the Writs ſent to the Sheriffs, for Electing Knights of the Shires.

Laſtly, That by this Writ, the Knights were to come to the King at *Weſtminſter*, three Weeks after St. *John Baptiſt* at fartheſt; which was the 15th of *July*; alſo, that in the ſame Year, between the Time of the date of the Writ, and the Time appointed for Meeting of the Knights, the Statute of *Weſtminſter* the Third was made, as may appear by this Clauſe at the beginning, *Dominus Rex in Parliamento ſuo apud Weſtmonaſterium poſt Paſcha, Anno Regni ſui Decimo octavo, videlicet in Quindena Sancti Johannis Baptiſt.* (that is, the 8th of *July*) *ad Inſtantiam Magnatum Regni ſui Conceſſit, Providit, & Statuit, Quod de cætero liceat unicuique libero homini,* &c. So that this was the ſame full Parliament, which gave the King Scutage on the firſt of *June*; and

and then the King and Barons, without the Commons, made this Statute, or the Knights had another Summons after the Date of this Writ (for before that they were not in Parliament) or the Knights came a Week before they had need to have done; but neither of the latter are probable, ſeeing the Knights then were great Husbands of their Time and Expences, and were not very forward to undertake this Service, as being conſtantly bound with, or engaged by Sureties, or Manucaptors for the Performance of it, and their Appearance in Parliament: And therefore it ſeems reaſonable to conclude, that this Law was made without them, and before their coming to Parliament.

So much of this Writ; from which, as well as divers following Writs and other Records, it is evident, that it was from this King's Authority, and at this very Time, that the Houſe of Commons came to be fixed and eſtabliſh'd in the preſent conſtant Form it is now, and hath been in for many Kings Reigns; and then the King in this Age was not altogether confin'd to any Number of Knights, Citizens, or Burgeſſes; nor were ſeveral ſtrict Forms and Uſages now practiſed, ever then thought of, nor ſome Legal Niceties and Punctilio's now in uſe, then judged abſolutely neceſſary.

F. Pray give me leave to anſwer what you have now ſaid from this Writ, before you proceed to any other Record. Firſt, as to your Argument from the Variety or Uncertainty of the Number of Knights of Shires, which you at firſt ſuppoſe to have been ſummoned to Parliament, that I doubt will prove a groſs Miſtake; for if we cloſely conſider the Writ it ſelf, it will prove no more than a Summons of theſe Knights to a great Council, Colloquy or Treaty (as the Writ here calls it) and not to a Parliament; the Words *Colloquium & Tractatum* mentioned in the Writ, not then ſignifying a Parliament; but ſuch a Colloquy, Treaty or Council, as is mentioned in the Statute of the Seventh of this King, forbidding all Men coming with Arms to ſuch Aſſemblies; wherein there is alſo a plain Difference made between Parliaments and ſuch Treaties, as I have already proved from the Statute of the Staple of the 27th of *Edward* the Third, which was firſt made in ſuch a Treaty or Council, as appears by the Title to the ſaid Statutes, and was afterwards confirmed by the next Parliament, in the 28th Year of the ſame King, *Chap.* 1. whereby *Magna Charta*, and all other Statutes before made, are alſo confirmed. For had this Summons (you mention) been to a Parliament, ſure there would have been alſo Writs of Summons found for the electing and returning of Citizens and Burgeſſes, as well as Knights of Shires to this Aſſembly, and theſe Writs of Summons would have been entred on the Dorſe of the Cloſe Rolls, according to the Rules your ſelf have laid down; whereas this Writ is only found in a looſe Bundle of Writs of Summons; neither is there any Title in the Margin of the Record (as is uſual in Writs of Summons to Parliament,) whereby it may appear what kind of Aſſembly this was to which theſe Knights were ſummoned. Nor is your Argument from the Date of the Writs of Summons any convincing Proof that the Commons were not already in this Parliament at the Time of the Writ iſſued; ſince during the Seſſion of it, the Earls and Barons might make this Requeſt, for calling of ſome other Knights out of the Counties, to give their Opinions and Advice in the Matters to be propoſed to them by the King; and that thereupon the King at their Requeſt, thought fit to ſummon Two or Three more of the Knights to have their Advice alſo.

And as for your laſt Argument, that the ſame Parliament which gave the Tax above-mentioned on the firſt of *June*, muſt be ſitting even to the very Time of the Return of the Writ, becauſe the Statute of *Weſtminſter* the Third was made on the *Quindene* of St. *John Baptiſt*, (*viz.* the 8th of *July*) ſo that the King and the Barons, without the Commons, made this Statute, and that theſe Knights were ſummoned after the Act was paſſed; there is no Neceſſity of making theſe Conſequences; for this Parliament might very well be diſſolved that very Day this Act paſſed, and this Council or Colloquy might be ſummoned to meet within Three Weeks after *Midſummer* (*i.e.* about the 16th of *July*) according to the Writ you have cited. And ſo I believe it would appear, were the Rolls of that Parliament, and the Writs for the

the Expences of the Knights now extant, as they are loſt, as well as thoſe of divers ſucceeding Parliaments.

M. Well then, you are forced to confeſs, that this Writ was iſſued whilſt the Parliament was ſtill ſitting; and if ſo, I cannot ſee any need there was of another leſs Council or Colloquy to meet after the Parliament was ended, ſince as long as it was ſitting, that could have much better diſpatched all ſuch Buſineſs as the King had to do; and how the King could foreſee that he ſhould have need of another Council before he had any Buſineſs for it, ſeems very improbable; and therefore I think I may very well ſuppoſe with the Doctor, that this Writ was a Summons to Parliament, though it does not (I grant) expreſly call it ſo. But your Argument is of no weight, that becauſe this Writ was not entred upon the Cloſe Roll, that therefore it is not to be look'd upon as a Summons to Parliament, as alſo becauſe the Title to it is only *Summonitio ad Conſilium*; ſince the Doctor in his Anſwer to Mr. P. gives us ſeveral Parliament Writs upon the Cloſe Rolls with this Title *ad Conſilium*; which proves, that the King had in thoſe Days a larger Power of calling what number of Knights of Shires he pleaſed to Parliaments; as appears by Two other Writs he there gives us of the 22d of *Edward* the Firſt, which are entred in the Cloſe Rolls to the Sheriff of *Northumberland*, to cauſe Two Knights to be elected for that County, bearing Date the 8th of *October*; and the next Day after, the King, as appears by another Writ to the ſame Sheriff, ordered him to cauſe to be choſen two other Knights beſides the former, and to cauſe them alſo to appear at *Weſtminſter* the Morrow after St. *Martin*'s Day, to hear and do ſuch things as the King ſhould more fully enjoyn: The like Writs (with both the former) were ſent to all the Sheriffs in *England*. Now though it is true, that the Title to the firſt of theſe Writs, is only *de Militibus Elegendis & Mittendis ad Concilium*; yet theſe Words well conſidered muſt certainly here mean a Parliament, both theſe Writs being entred upon the Cloſe Rolls, where all Writs of this kind are wont to be found, as I have already obſerved; and beſides, the Words in the firſt Writ are the ſame with thoſe which are found in ſeveral other Writs of Summons to Parliament, *viz. ad Conſulendum, & Conſentiend. pro ſe & Communitate illâ hiis qua Comites, Barones & Proceres prædicti concorditer ordinaverint in præmiſſis.*

F. I confeſs we are at a loſs in this Affair, for want of the Records of this Parliament; which if we had, I doubt not but there would appear very good Reaſons why the Lords did then deſire the King ſhould conſult more of the Knights of the Shires than what had appeared at this Parliament; as that Lords might refuſe to give their Advice in the Matters propoſed by the King, without he would alſo conſult more of the beſt and ableſt Knights of Counties, who were to come up with freſh Power, and further Inſtructions, what Anſwer to give the King in the Matters he ſhould propoſe, which, that it was neither to give Money, nor make Laws, is plain; ſince (you ſay) the Tax of 40 *s.* on every Knight's Fee was given, and the Statute of *Weſtminſter* 3d made before they came up to Parliament; but indeed the Words in the Writ plainly prove that this was no Parliamentary Meeting, ſince they are here only Summoned *ad Conſulendum, & Conſentiendum*; whereas in all Writs of Summons to future Parliaments, the Words are *ad faciendum quod tunc de Communi Conſilio ordinabitur*, or the like, as appears by the Writ of Summons of the 23d of this King, which the Doctor has printed; whereas the Words in this Writ are only *ad conſentiendum*, &c. *hiis qua Comites, Barones & Proceres prædicti tunc duxerint concordanda*, &c. And if this had been done at the Requeſt of all the Tenants *in Capite* (as you ſuppoſe,) how come the Biſhops, Abbots and Priors, who held alſo *in Capite*, to be omitted, and not mentioned in this Writ to have joyned in this Requeſt, as well as the Earls, Barons and great Men?

B. A. P. pag. 137.

But as for the Doctor's next Precedent, *viz.* a Writ to the Sheriff of *Northumberland*, to return Two Knights of the Shire, and then the next Day after, other Two for the ſame County; I am not at all ſatisfied, that thoſe Writs were a Summons to a Parliament, and not to a great Council; for beſides the Title of the Writ is *de Militibus Elegendis & Mittendis ad Conſilium*, the Words

Words in the Writ are not the ſame with thoſe which were commonly uſed in Writs of Summons to Parliament, as I have already ſhewn you in this Writ of Summons we are now upon: Whereas in the Summons to Parliament of the 23d of this King, the ordaining Part doth as much refer to the Commons, as to the Lords, the *Commune Conſilium* conſiſting of both; whereas in theſe Writs you have cited, they were to conſent to ſuch Things which the Earls, Barons, and great Men ſhould think fit to agree to. But that I may ſhew you a little more plainly, the Abſurdity of this Fancy of your Doctor's, that theſe Knights of Shires were now ſummoned, the Parliament ſitting; Pray let me ask you one or two Queſtions concerning this Buſineſs; pray who were theſe Gentlemen that the King you ſay thus ſummoned to Parliament? *Clauſ. 23. E. 1. M. 4. Dorſ.*

M. According to the Doctor's Account, they muſt have been all Tenants *in Capite*, ſince he often tells us, that out of theſe alone, the Knights of Shires were choſen at the firſt.

F. Well, but then who were theſe *Magnates* and *Alij Proceres*, mentioned in the Statute of *Weſtminſter*, and in this Writ of the 18th of *Edward* the Firſt?

M. I muſt own my ſelf at a loſs, certainly to define who they were; for if I ſay they were the ſmaller Tenants *in Capite*, who are here put as a diſtinct Order from the *Comites & Barones* immediately foregoing, I foreſee you will ask me how theſe Gentlemen could be Summoned; ſince all the Tenants *in Capite* were at this Parliament already? Therefore, I muſt tell you, I think there were only ſome of the greateſt and wiſeſt of the Tenants *in Capite*, who were no Barons, now Summoned; and whom the Doctor tells us, were often called to great Councils, as Barons, Peers; and who, though ſometimes called to ſit among the Lords, were often again omitted in ſeveral Kings Reigns; ſo that this Parliament was compoſed (as thoſe of *Malbridge* and *Glouceſter*) not of all, but only of the more diſcreet of the leſſer Barons or Tenants *in Capite*.

F. If this be all you have to ſay to extricate your ſelf out of this Difficulty, I think it will not amount to much; for in the firſt place, all you have here ſaid is meer Conjecture without any Proof; ſince this Statute of *Weſtminſter* 3d, ſays only in general, that it was made at the Inſtance of the *Magnates*, under which Title your Doctor, when he explains the Writ of Summons to the Archbiſhop of *Canterbury* tells us, were frequently comprehended the *Barones Majores*, the Earls and Barons; as under *Minores*, the leſſer Tenants *in Capite*; which when the Statute of *Weſtminſter* the firſt was made, he will have to be the whole Commonalty of the Land therein mentioned; and why this Parliament of *Weſtminſter* the 3d, ſhould not conſiſt of the ſame Members now, needs ſome better Reaſons than your bare Affirmation to the contrary. Beſides, this Prerogative of calling theſe Barons Peers to Parliament, did not only extend to Tenants *in Capite*, but to other Meſne Tenants alſo; if the King thought them conſiderable enough for Eſtates, or Wiſdom, to do them that Honour; and ſo was not confined to Summon none but Tenants *in Capite*, who according to your Interpretation of King *John*'s Charter had all a Right to appear by General Writs, at the Common Council of the Kingdom. But you may put what Senſe you pleaſe on theſe Words *Magnates & Proceres*; yet I am ſure your *Doctor* can take them in no other Senſe than for the Community of all the Tenants *in Capite*, both great and ſmall; and ſo he tells us in his *Gloſſary*, when he Comments upon the Writ of the 30th of *Edward* the Firſt, which you mentioned, and which refers to this very Parliament of the 18th, when Forty Shillings was granted on every Knights Fee to Marry the King's Daughter; and there the Doctor immediately tells us, "That ſuch as paid that Scutage "were *Tota Communitas Regni*, and no others; and that the Tenants *in Capite* "granted and paid it firſt for themſelves and Tenants, *&c.* and which muſt certainly relate to this very Parliament of the 18th of *Edward* the Firſt, or none at all. *B. A.P. p. 147.* *Tit. Communitas Regni. B.G. p. 32, 33.*

M. I confeſs I do not ſee how the *Doctor* can ſolve this Difficulty, but by denying what he has already ſaid, and affirming, as I do now, that all the leſſer Tenants *in Capite* were not Summoned to this Parliament, but only

ſome of them at laſt ordered by this Writ to be choſen and returned by the Counties.

F. Yes, he might do it, if bare affirming were to paſs for Proof; but I ſhall not give up my Reaſon upon no better Grounds, either to him or you; not to mention the Improbability of the Thing, that the King ſhould be now over-perſuaded by the Earls, Barons, and other Great Men, to call theſe Knights of Shires, which had been omitted ever ſince the 49th of *Henry* the Third, for above Twenty Years, when he had no need at all of them, but rather the Advantage of governing without them; ſince it is the Policy of Princes rather to diminiſh than increaſe the number of the Members of their great as well as private Councils, who certainly are more eaſily managed when they are a few than a great many.

M. But what if we ſhould go from the Doctor's Poſition, and ſay, that perhaps theſe Knights were choſen out of the Meſne Tenants of the Tenants *in Capite*; many of whom I grant might be conſiderable for Intereſt as well as Prudence; and with whom the King at their Requeſt might deſire to treat of certain Matters which had been before moved and propounded by him.

F. This is all that can be ſaid, and yet is much more unlikely than the other; ſince to believe that the Earls, Barons, and Tenants *in Capite* ſhould be now grown ſo weary of their Power of impoſing Taxes, and making Laws for the whole Nation, as to intreat the King to admit their Under-Tenants to partake of ſo large a ſhare in both, is ſo extravagant a Fancy, that if it had not ſuited with the Doctor's preſent Hypotheſis, he would never have aſſerted it in cold Blood; ſince himſelf affirms, that upon the making of King *John*'s Charter, the Earls, Barons, and Tenants *in Capite*, were the only Parties to it; *and that all the reſt of their Tenants who were there preſent, were only their Retinue and Tenants in Military Service, which were with them at* Runnemede, *and were hardly to be reckoned among the Freemen of the Kingdom; all the reſt being only Followers who helped to augment the Noiſe, and were not Law-makers: For 'tis not probable* (ſays the Doctor very well) *that thoſe Men that had the Force of the Nation would permit Men of ſmall Reputation to ſhare with them in Law-making: Thoſe that had the Power of this or any other Nation* de Facto, *always did give Laws, and Tax the People.* But it ſeems theſe Great Lords and Tenants *in Capite*, are either very ſtiff to maintain, or elſe eaſy to give up their Privileges, juſt as it beſt ſuits with the Doctor's preſent Occaſion; but the Doctor may contradict himſelf as much as he pleaſes, ſince it is not his Fault, but his Hypotheſis that hath led him into it.

B. G. Glo. p. 51.

M. I confeſs it ſeems ſomewhat hard at preſent to conceive it; but we know not what Reaſon the Lords and Tenants *in Capite* might have had to deſire the Concurrence of theſe Knights of Shires at this Juncture of Time. But that their coming to Parliament looks like a new Thing, may farther appear from hence, that the King for a good while after the introducing Knights of Shires to ſerve in Parliament, was wont to uſe the Liberty of Nominating the ſame Members of Parliament who were formerly choſen; as appears by a very remarkable Writ the Doctor there likewiſe gives us, of the 28th of the ſame King, directed to the Sheriff of *Cumberland*; whereby he is commanded to cauſe to appear at the Parliament of *Lincoln*, on the *Octave* of St. *Hillary*, the very ſame Knights, Citizens and Burgeſſes, who had before appeared at the laſt Parliament, unleſs any of them were Sick or Dead. From which we may collect, that our Kings in thoſe Days often made uſe of their Prerogative of Summoning ſuch Members to Parliament, as were not then actually choſen by the Counties to ſerve in that Parliament: And for a farther Confirmation of this, there is ſtill extant upon Record in the ſame Roll the Returns of ſeveral of the Sheriffs upon the ſame Writs: Whereby it appears, that the ſame Members were returned to appear in this Parliament, without any new Elections, who had before ſerved at the precedent, unleſs in the Caſe of ſome that were Sick or Dead.

B. A. P. p. 152.

Clauſ. 28. E. 1. M. 3. Dorſ.

And that our Kings had not yet a long Time after loſt their Prerogative of Nominating how many Knights, Citizens and Burgeſſes, they would have choſen and returned to appear in Parliament, may appear by a Writ of the 45th of *Edward* the Third, whereby one Knight for a County, and one Citizen and Burgeſs, and

Clauſ. 45. Ed. 3 M. 2. Dorſ.

and thoſe too named by the King to the Sheriff, were to be Summoned to appear in Parliament at *Wincheſter*, to do thoſe Things that are appointed in the ſame Writ, which were likewiſe directed to all the Sheriffs in *England*; and that this was a Parliament, appears from hence, that the Knights, Citizens and Burgeſſes had Writs for their Expences at this Meeting at *Wincheſter*. And though in theſe Writs it is only expreſſed by theſe Words, *Magnum Conſilium Noſtrum*; yet from this Writ of Summons it is evident, it did the Buſineſs of a Parliament, and ſo no great Matter for the Name.

Cl. 45. *Ed.* 3. *M.* 22. *Dorſ.* *T. R.* 17. *die Junii.*

F. If theſe be all the Arguments you have to produce againſt the Ancient Right of the Commons being part of the Parliament before the 18th of *Edward* the Firſt, I doubt they will not be ſufficient to do the Buſineſs. For as to this Record of the 28th of *Edward* the Firſt, whereby the King is ſuppoſed to have had a Power to cauſe thoſe Knights of Shires to be returned who were Elected to ſerve in the Parliament before going, without any new Election, this is altogether precarious; for if you will but read the Writ it ſelf, and the Reaſon of the King's thus acting, it will plainly prove the contrary. For the King recites in that Writ, "That having "reſolved that the Charter of Foreſts ſhould be obſerved, and that his Subjects "had made a Perambulation thereupon; yet that he would conclude nothing in "that Matter, without the Counſel of the Prelates, Earls, Barons, and other Great "Men; and therefore deſiring to haſten that Buſineſs, as far as he could without "any Delay, he thereby orders him to cauſe to come before him to the Parliament at *Lincoln*, the ſame Knights, Citizens, and Burgeſſes, as were before "Elected. Now the King might have very good Reaſon for it, why he would rather treat with them than with any other, becauſe they had been privy to all the precedent Tranſactions concerning this Buſineſs of Foreſts, and therefore were moſt likely to come to the ſpeedieſt Concluſion with the King in that Affair, as being better inſtructed in it, than it was poſſible for any new Members to be, who had not before been privy to the whole Affair.

Yet that the King never intended hereby to impoſe Repreſentatives upon his People without their free Conſent, appears by this Clauſe at the end of the ſaid Writ, *Ita quod Milites, Cives & Burgenſes prædicti dictis die & loco modis omnibus interſint cum* plena poteſtate audiendi, & faciendi *ea quæ ibidem in præmiſſis ordinari contingent pro communi commodo dicti Regni.* Now how theſe Knights, Citizens and Burgeſſes could appear in Parliament with full Power of acting therein, without the new Election or Confirmation at leaſt of thoſe whom they repreſented, I ſhould be very glad if the Doctor or your ſelf could inform me. But to come to your next Record of the 45th of *Edward* the Third, whereby you would prove that the King in thoſe Days had a Power of appointing, not only how many Citizens and Burgeſſes ſhould appear in Parliament for each County, but alſo could name the Perſons that ſhould appear therein: I wonder how the Doctor could ſo impoſe upon your, or his own Underſtanding; ſince nothing is more apparent than that this Council at *Wincheſter*, to which they were Summoned, was no Parliament at all but a Great Council, as appears by the very Words of the Writ it ſelf, which recites, "That whereas a Parliament lately at *Weſtminſter*, "had given the King a Subſidy of Twenty Four Shillings and Three Pence upon "every Pariſh in *England*, that the King being willing to be better inform'd "after what manner the Levy of this Tax might be ſooneſt performed; and be-"cauſe it would be burthenſome for all the Great Men, Knights, Citizens and "Burgeſſes, who came to the ſaid Parliament to meet together again for this "Matter, therefore he Ordained for the ſparing their Pains and Expences, to "have a Colloquy and Treaty with ſome of the ſame Members, and therefore "names the very Perſons whom he commands ſhould appear before him at *Win-"cheſter*, to inform him and his Council of the beſt Manner and Form whereby "the ſaid Tax might be ſooneſt and moſt conveniently levied, according to the "Intent of the ſaid Grant. So that nothing is more plain from the Writ it ſelf, than that this Aſſembly was no Parliament; the proper Buſineſs of which is always to make Laws, give Money, or redreſs Grievances; none of which, it is apparent, were the Cauſe of this Meeting. So that thoſe who were thus Summoned, did not appear as Knights of the Shires (their Power being expired at the Diſſolution of the Parliament) but only as ſo many particular private Men, who by reaſon of their Intereſt in the Country, the King ſuppoſed could beſt inform him

in the Buſineſs above-mentioned; the like I may ſay for the Citizens and Burgeſſes then ſummoned. But that in the Reign of this King there were ſeveral Councils of this kind, which tho' no Parliaments, as having but one Knight, one Citizen, and one Burgeſs, and only making Temporary Ordinances concerning Trade, and other Things of leſs moment, which were to be put in Practice for a Time, till they could be confirmed by the next Parliament, appears by the Ordinance or Statute of the Staple above mentioned.

Pag. 215. And of theſe Mr. *Pryn* in the firſt Part of his Parliamentary Regiſter of Writs gives us divers Precedents; which he rightly judges, were only Writs of Summons to ſuch Councils, and not to Parliaments; becauſe there is no Summons in them *ad Parliamentum* (which was the conſtant Word then in uſe for the great Council of the Kingdom) but only *Colloquium & Tractatum* or *Concilium*, which was the Title then given to ſuch Colloquies, Treaties, or Councils; as alſo becauſe there are often but one Knight for each Shire; and no Citizens, or elſe but one for each City and Borough; as alſo from the Writs to thoſe Biſhops, which are ſummoned to ſuch Councils, in which is no Clauſe for the ſummoning of the Deans, Arch-Deacons, and Proctors for the Clergy of the Dioceſe, as was then uſual in all Parliamentary Summons; and laſtly, becauſe the Titles of the Writs for theſe Aſſembles, are only *Summonitio ad Concilium*; all which your Doctor paſſes by very ſlily without taking any Notice. And this may ſerve for a ſufficient Anſwer, not only to this, but all thoſe other Precedents which the Doctor hath there heaped together of the like nature.

M. But what ſay you to the laſt Record the Doctor has given us, whereby he farther proves that the King did likewiſe often uſe his Prerogative of diſcharging ſuch Knights of Shires as he judged not fit to be choſen, or returned? As may appear by another Writ which he likewiſe gives us of the 7th of *Richard* the Second, directed to the Sheriff of *Surry*, reciting, "That

B. A. P. Page 162. *Cl. M.* 32. "whereas Sir *Thomas Camois* being a Banneret, was choſen one of the "Knights of the Shire for the ſame County, yet becauſe ſuch kind of Ban- "nerets were not wont before-Times to be choſen Knights of the Shire, "therefore he commands them to cauſe another Knight to be choſen to come to "Parliament in his ſtead. So that upon the whole Matter nothing ſeems plainer to me than that the chuſing and returning of Knights, Citizens and Burgeſſes, being then but a Modern Inſtitution, and proceeding wholly from the King's Favour, it was no wonder if they uſed a greater Liberty, and a larger Prerogative of nominating and diſcharging ſuch Members of Parliament as they thought fit, than they have of late Ages taken upon them to do, when the Cuſtom concerning theſe Matters became better ſettled by Proceſs

Pag. 154. *Ib.* of Time. I have omitted ſeveral other Inſtances, which the Doctor there gives us of the King's Adjourning or Diſmiſſing of Parliaments, to appear again upon his Summons without any Day appointed, which is contrary to the preſent Cuſtom of Parliaments; as alſo of divers Records in the Reign of *Edward* the Second; the firſt a Precept to the Sheriffs to ſend up again ſuch Members as had left the Parliament, or elſe to chuſe others in their Stead; as alſo another Record of the ſame King, whereby it appears, that he not only by his ſole Authority (and as far as it appears) without their Conſent, not only Prorogued, or Adjourned the Houſe of Commons, but alſo puniſhed the Members for Abſence. All which do farther prove that ſeveral of thoſe Rights and Privileges which the Houſe of Commons do now aſſume as their ancient and undoubted Birthrights, have been only granted from the Crown by the Indulgence or Connivance of ſome of our Kings, who were afraid to diſpleaſe them, and which his Majeſty may, for ought I know, reaſſume and exerciſe again whenever he ſhall think it convenient ſo to do.

F. As for this laſt Record, whereby you would prove from the King's diſcharging Sir *Thomas Chamois* from ſerving as a Knight of the Shire for *Surry*, that therefore he had a Power at that Time of diſcharging whom he pleaſed from ſerving in Parliament, the Writ it ſelf ſhews the contrary, for it

Pag. 736. there recites, that the ſaid Sir *Thomas* and his Anceſtors had been *Bannerets*, which could not be meant of ſuch *Bannerets*, as were Knighted in the Field; and therefore Mr. *Selden* in his Titles of Honour truly ſuppoſes, that this

Word cannot be underſtood of any other *Banneret* then a Parliamentary-Baron, or *Banneret* of that Time: "The Expreſſion of *Hujuſmodi Banneretti* "ſhewing that it is not meant of all *Bannerets*, but ſuch only as have that "Title, either by Inheritance, or in ſuch a kind as an Inheritance might "be made of it, is apparent, by the precedent Words, *Bannerettus eſt ſicut* "*complures Anteceſſorum ſuorum extiterunt.* And the ſaid Sir *Thomas*, and his Anceſtors, having been often called to Parliament among the Barons, therefore this Writ was iſſued to diſcharge him; for it appears by the firſt Volume of Sir *William Dugdale*'s Baronage of *England*, that this Nobleman's Anceſtors had been frequently ſummoned to Parliament, from the Reign of *Henry* the Third, as this Gentleman himſelf was likewiſe ſummoned to all Parliaments from this 7th Year of *Richard* the Second, to the 8th of *Henry* the Sixth incluſively, when he is ſuppoſed to have died. And if he himſelf were not ſummoned to Parliament as a Lord, before the 7th of *Richard* the Second, Mr. *Selden* in the ſame Place, gives us a ſufficient Reaſon how this might be, *viz.* "That his Name, by reaſon of Non-age, or ſome other Cauſe, was "omitted till the 7th of *Richard* the Second, for want of an Heir by Lineal "Deſcent, [Entails of Honours by Tenure, not being then frequent.] And as it "hath ſometimes happened (in like Caſe) the Dignity being obſcured by his "abſtaining from the Name of Lord, or Baron, the Freeholders of *Surry* "choſe him Knight of their Shire; after which, he being according to his "Anceſtor's Rights, ſummoned to Parliament as a Baron, there was a Neceſ-"ſity to diſcharge him, which was done under the Name of *Banneret*, and "not Baron, it ſeems according to the uſe of that Time, becauſe he then "held not a whole Barony, or did not hold *per Baroniam*". So that whoever will but conſider this Account Mr. *Selden* gives us of this Buſineſs, need not run to the King's Prerogative, for a Reaſon how this Peer came to be diſcharged from ſerving as a Member in the Houſe of Commons.

But that *Banneret* then ſignified the loweſt Degree of the higher Nobility, appears by the Statute of the 15th of *Richard* the Second, in the Second Parliament, in which, after the Archbiſhop, Biſhops, Abbots, Priors, Dukes, Earls, Barons, immediately follow *Bannerets*, Knights of Shires, Citizens and Burgeſſes; all which are ſpecified to have a Right of coming to Parliament of old Times; ſo that this Title of *Banneret* could not then ſignify what it hath ordinarily done ſince that Age: But a Baron's Peer, at leaſt ſuch a one, had been himſelf, or his Anceſtors, frequently called to ſit among the Lords, but not holding by Barony, was not called a Baron, but *Banneret* only. *Polt. St. p.* 140.

So that I hope I have now fairly run through, and examined all the Precedents which you or your Doctor have been able to urge in this great Queſtion; and I think, if you are as candid and ingenuous as I take you to be, you will not aſſert, that any of them do amount to a Proof, either that the Commons were never ſummoned from the 49th of *Henry* the Third to the 18th of *Edward* the Firſt; or that the Writ of Summons he there produces, was to a Parliament and not to a great Council; or that the King ever took upon him to appoint what number of Knights, Citizens and Burgeſſes, ſhould come to Parliament, or could nominate who they ſhould be, or could diſcharge whom he pleaſed from ſerving as Members therein. All which your Doctor, I think, with greater Confidence, than right underſtanding of the true meaning of the ancient Writs and Records of Parliament, hath undertaken to aſſert. I beg your pardon for troubling you ſo long on theſe Heads, ſince the Length as well as Diverſity of Records you have now cited, could not be anſwered in leſs compaſs.

M. I muſt confeſs, you have given pretty plauſible Anſwers to moſt of the Authorities and Records I have now cited; yet I cannot aſſent ſo far as to come over to your Opinion, without a longer Conſideration of the Strength of the Anſwers you have now given me to the Doctor's Authorities. But in the mean Time you would oblige me, if you could give me the reſt of your Arguments, whereby you would undertake to prove that the Commons have been always an eſſential Part of the Parliament ever ſince the Conqueſt: For it ſeems to me, by what I have read out of our ancient Hiſtorians, that there is no expreſs mention made of them

by

by Name, in any Hiſtorian or Record, till the Reign of *Edward* I. and as for thoſe Arguments Mr. *P.* hath given us to the contrary, methinks the Doctor hath given ſatisfactory Anſwers to them.

F. I think I have made it clear enough, that the Commons of *England* were a conſtituent Part of the *Wittena Gemote*, or Common Council of the Nation, before your pretended Conqueſt; and if it doth not appear that they were deprived of that Right by the *Normans* Entrance (which you have not yet proved) I think we may very well conclude, that Things continued in the ſame State as to the Fundamental Conſtitution of the Government, as well after your Conqueſt as they did before. Nor have you, as I ſee, proved any Thing to the contrary; ſince you confeſs, that as much a Conqueror as King *William* was, yet he altered nothing in thoſe Fundamental Conſtitutions; the moſt that you pretend he did, being only in an Alteration of the Perſons who were the Legiſlators, from *Engliſh* to *Frenchmen*, or *Normans*. So that upon the whole Matter, I think there is no need of any new Arguments to confirm this Truth; ſince the Commons of *England* claiming a Right by Preſcription, of having their Repreſentatives in Parliament; if you, nor your Doctor, nor none of thoſe whom he follows, can prove by ſufficient Authorities when this began, then I am ſure you ought, if you were of the Jury in this Matter, to find for the Tenant in Poſſeſſion; ſince that, together with a conſtant Uſage Time out of Mind, is as well by your Civil as our Common Law, a ſufficient Title to any Eſtate: Yet I doubt not but to ſhew you the next Time we meet, that the Doctor has not given ſuch ſatisfactory Anſwers as you imagine, to moſt of Mr. *P*'s beſt Arguments, proving this Right of Preſcription to have been the conſtant Opinion of all ſucceeding Ages; to which I ſhall alſo add divers new Authorities, as well from Ancient Hiſtorians, as Parliamentary Records and Statutes. But ſince it is grown now very late, I beg your Pardon till another Opportuniay.

M. I thank you, Sir, for the Pains you have taken to ſatisfy me in this great Queſtion; but pray come again within a Night or Two, that we may make an End of this weighty Controverſy, and then we may proceed to what we at firſt intended, *viz.* Whether the King can ever lawfully be reſiſted; or whether by any Act he may commit, he can ever ceaſe to be King.

F. I accept of your Propoſal, and ſhall wait of you again as you appoint, but in the mean Time pray conſider well of the Authorities I have now urged, and the Anſwers I have given to your Arguments, and then I hope there will be the leſs need of new ones.

M. I ſhall not fail to do it; but in the mean time am your humble Servant.

F. And I am yours.

Bibliotheca Politica.

DIALOGUE VIII.

Being a Continuation of the former Diſcourſe concerning the Antiquity of the Commons in Parliament; wherein the beſt Authorities for it are propoſed and examined. With an Entrance upon the Queſtion of Non-Reſiſtance, &c.

PART III.

M. I Am glad to ſee you again ſo ſoon; for indeed I am very impatient to make an end of this great Queſtion concerning the Antiquity of the Commons appearing in Parliament; and therefore pray go on where you left off, and give me thoſe plain Proofs you promiſed me, whereby you would make out that both the Knights of Shires, as well as the Citizens and Burgeſſes, had a Right to be there ever ſince the Conqueſt; for I deſire to go no higher.

F. I thought I had ſaid enough on that Subject at our laſt Meeting to ſatisfy any reaſonable Perſon: I am ſure more than you were able fairly to anſwer, eſpecially as to my Replies to the beſt Authorities you brought from the Doctor; and therefore pray before we proceed farther, tell me your Opinion upon Second Thoughts, of thoſe Authorities and Arguments I then gave you.

M. I muſt confeſs they do ſomewhat ſhock me; bur I hope you will pardon me, if I cannot come over to you, without firſt hearing what may be ſaid by the other Side; and to this End I have writ to the Learned Doctor for his Solution to ſeveral Difficulties, that I confeſs upon his Hypotheſis I know not how to ſolve; but doubt not but to receive farther Satisfaction from him as to thoſe Points in a ſhort Time; but in the mean while, let us proceed in our intended Deſign, and examine the reſt of the Arguments you have to produce on your Side.

F. I ſhall obey your Commands; and therefore in the Firſt Place you cannot expect more than is in our Power to give you. For ſince all the Parliament Rolls and Writs of Summons, (except thoſe of the 49th of *Henry* the Third) are loſt, till after the Times in Queſtion between us, you muſt be contented with what other Proofs we can produce, provided they are ſufficient to ſatisfy any unbyaſs'd, indifferent Perſon. And to this End I ſhall ſort the Authorities I intend to make uſe

uſe of into theſe Three Heads. Firſt, I ſhall give you divers Quotations out of the moſt Ancient Writers, who lived in, or neareſt the Time you prefix; *viz.* the coming in of the *Norman William*; and ſhall deſcend down in order of Time, as low as your Doctor's 18th of *Edward* I.

Secondly, I ſhall ſhew you from the Authorities and Teſtimonies of the Judges of almoſt all our Courts; of the Houſe of Commons; nay, of ſeveral whole Parliaments, and the King himſelf, That the Commons had an undoubted Right of Sitting there by Preſcription.

Thirdly, From the Conſent of all our Neighbouring Kingdoms, who being governed by a King, and a great Council or Aſſembly of the Eſtates according to the *Gothick* Model, the Commons had always from the Inſtitution of the Government their Repreſentatives in thoſe Aſſemblies.

M. I much doubt that; but pray begin with your Ancient Hiſtorians; for as for my own Part, I muſt freely tell you, though I have looked them over very warily, yet I can find nothing in them concerning the particular conſtituent Parts or Members of our great or Common Councils, but the *Magnates*, *Optimates*, or *Principes*, *Comites* and *Barones*; all which, though you have at our laſt Meeting ſhewed me from ſome Authorities, that they may take in others, though not Noble by Birth; yet ſince theſe Words have been moſt commonly taken in another Senſe, it needs ſome better Proof than to ſay in general, that meer Commoners were there, becauſe thoſe general Words may ſometimes be taken in that Senſe. And as for the Words *Clerus* and *Populus*, which I confeſs are often mentioned to be preſent at thoſe Aſſemblies; the Learned Doctor, in ſeveral Places of his Anſwer to Mr. P. as alſo in his *Gloſſary*, hath plainly proved, that as the Word *Clerus* ſometimes ſignifies the Biſhops, and ſometimes the Inferior Clergy; ſo *Populus* does alſo neither great nor little People, but only the Laity; and therefore as it is uſed and reſtrained, ſignifies the Lay *Plebs*, or the Lay *Magnates*. What I mean by *Plebs*, I ſhall ſhew you by and by; but that the Word *Populus* does not ſignify the Inferior Sort of People, or ſuch as were inferior to Barons, Tenants *in Capite*, or Noblemen, the Doctor has very well proved from that Paſſage made uſe of by Mr. P. to prove the Commons to have been in that great Council which made *Henry* the Firſt King, becauſe it is ſaid by *Mat. Paris*, that *Congregato Clero, & Populo univerſo*, &c. by which Word *Populus* he would underſtand the Commons alone diſtinct from the great Lords. But the Doctor very plainly ſhews him the Falſeneſs of this Interpretation from the ſame Author, within Three Lines of the Place himſelf had cited; where the ſame Body of Men, which is but juſt before called *Populus*, is preſently after called *Magnates, ad hæc Clero reſpondente & Magnatibus cunctis*; not one Word in this Place of any *Populus*; but the Great, or Noblemen, (that is, the Tenants *in Capite*) muſt be the People or Laymen here mentioned; and this ſame *Clerus* and *Populus* is by *Eadmerus*, ſpeaking of a great Council held at *Weſtminſter* in the Second Year of this King, called *Primates Regni utriuſque Ordinis*; or as *Florence* of *Worceſter* words all the Orders of Men aſſembled in this very Council, *Omnes Principes Regni ſui Eccleſiaſtici, & Secularis Ordinis*; the which the Doctor alſo proves from ſeveral like Paſſages in *Eadmerus*; in all which, as alſo in all other Authors the Doctor hath there cited, this *Populus* is explained to be the Earls, Barons, and great Men of the Kingdom only; that is, all the greater, as well as ſmaller Tenants *in Capite*. And though I confeſs at our laſt Meeting you brought very good Proof, that the Word *Populus* was more comprehenſive among the *Romans*; yet though the *Roman Populus* comprehended all the People, as well Nobility as Plebeians; and that in *Scotland* it took in the Burgeſſes of the Royal Boroughs, which hold immediately of the King; yet does it not follow that this Word muſt needs ſignify ſo in this Kingdom too, ſince in all Countries, not all the People, but only the Governing Part of it is uſed for the *Populus* in all Hiſtories, Publick Acts, and Laws of thoſe Kingdoms; thus in *Poland*, the *Populus* conſiſts ſolely of great Councils of the Nobility and Senate, in which there are no Plebeians at all.

B. A. P. p. 26. 27. *Tit. Clerus & Populus.*

P. R. C. Fol. 55.

B. A. P. Pag. 27, 28.

Anno D. 1102.

Ibid. p. 31, 32.

F. I hoped we had done wrangling about this Word *Populus*; but ſince I ſee you are not yet ſatisfied, I ſhall ſhew you more plainly, that by this Word uſed in our Ancient *Engliſh* Hiſtorians, is not only meant the great Lords, and Tenants *in Capite*, but another larger, and more comprehenſive Body. And whereas you ſay that the Word *Populus* is ſtill reſtrained by our Ancient Hiſtorians to the *Magnates*,

nates, Primates, & Principes Regni; all which Words do in their genuine Signification ſignify Great or Noble-men; and that tho' they are ſometimes taken in a different Acceptation, yet that it lies upon me to prove that they are to be taken in my Senſe. To this I muſt tell you, that the proving Part ought to lye wholly of your ſide; for ſince the Commons of *England* have been for above theſe Four Hundred Years conſtituent Members of our Parliament, (as is agreed on all hands) and that they alſo claim to be ſo by Right of Preſcription, it ſtill lies at your Door to prove the contrary, and to ſhew at what Time, and upon what Occaſion they were firſt introduced: Which if you have not been able hitherto to perform, ſo as to give me any tolerable Satisfaction, you cannot blame me if I ſtill keep my own Opinion, and believe them as Ancient as Kingly Government it ſelf in this our Iſland.

But ſince I grant theſe Words *Clerus* and *Populus* are of a general, and equivocal Signification, their true Senſe and Meaning is beſt to be underſtood from the Subject Matter that is treated of; as I ſhall ſhew you firſt from the Nature and Signification of the Words *Clerus* and *Populus*, according to the ancient Conſtitution of our Government, that they muſt ſignify many more than your Tenants *in Capite* alone; and then I ſhall confirm my Interpretation by the Authority of ſuch ancient Hiſtorians as lived either in, or very near the Times I mention; and therefore I ſhall firſt prove it from the great Analogy there was between the *Clerus* and the *Populus*, ſo that if the *Clerus* took in more than your Tenants *in Capite* in our Common Councils, by the ſame Reaſon the *Populus* muſt do ſo too.

Now that this word *Clerus*, when uſed by it ſelf, does not originally ſignify either the Biſhops and Abbots alone, or the inferior Clergy alone, (as your Dr. aſſerts) is evident, becauſe *Clerus* is a general Word, and comprehends all the Clergy of whatſoever Sort or Degree. Now that all the Clergy, as well the Superior as Inferior, had either themſelves in Perſon, or elſe by their Repreſentatives, a Place in the Saxon *Witten Gemots*, or *Mycel* Synods, and made together with the Laity one entire Council, or general Aſſembly, without the joynt Conſent of both which no Laws or Conſtitutions, whether Eccleſiaſtical or Civil, could be enacted: For Proof of this, we need go no farther than Sir *Henry Spelman*'s firſt Volume of *Saxon* Councils, and particularly in the Councils or Synods of *Cloveſho* firſt and ſecond, that of *Kingſton*, *Anno Dom.* 838. that held under King *Egbert*, and *Withlafe* King of the *Mercians*, and that of *Wincheſter* under the ſame King *Egbert*, in which Tithes were firſt granted: In all which you will find that both the Clergy, as well the inferior, below the Degree of Biſhops and Abbots, as alſo the Laity below your Earls, and great Aldermen and Wites, had a Share. *Vide* Spelman's *Conne.* 1 *Vol. from p.* 332, *to* 346.

And that this continued ſo, both in, and after the *Norman* Times, appears by the firſt great Councils we have left us, that were held under the firſt Kings of the *Norman* Race.

M. I ſhould be very glad to ſee that proved; for I always hitherto believed that none of the Clergy had then any Votes in the Great, or Common Council of the Kingdom, but thoſe Biſhops, Abbots and Priors, who all held *in Capite* of the King alone. And tho' it is true, there was alſo a Synod, or Convocation of the Clergy often held at the ſame Time when the Common Council of the Kingdom was aſſembled, yet was it no Part of that Council; and as the Clergy had nothing to do in the making of Temporal Laws, ſo had the Laity no hand in the making of Eccleſiaſtical Canons, or Conſtitutions; for the Pope's Legate or Archbiſhop of *Canterbury* often held theſe Synods at other Times when the Common Council of the Kingdom was not aſſembled at all; and thus it continued till the 25th and 26th of *Henry* the Eighth, when the King was firſt by the Clergy in Convocation, and afterwards by the whole Parliament, recognized and declared Supreme Head of the Church of *England* under Chriſt; and from that Time the King re-aſſumed the Power which the Pope had before uſurped; and his Conſent alone under the Great Seal is the only Ratification of all Canons or Eccleſiaſtical Conſtitutions paſſed in either of the Convocations of *Canterbury*, or *York*, at this Day.

F. I grant that for between Three Hundred and Four Hundred Years, the Matter of Fact hath been as you ſay; but that it was not ſo from the beginning, is alſo as certain. For firſt, in the *Saxon* Times, before the Pope's Uſurpation came

in, it is evident from the Councils, or Synods, I have now cited, that the King had no more Power to make or confirm any general Eccleſiaſtical Laws or Conſtitutions without the Conſent of the *Wittena Gemot* or *Mycel* Synod, conſiſting of the Clergy, as well as Laity, than he had to make Tempòral Laws without it. So far were they in thoſe Times from having any Notion of any Perſonal Supremacy in the King in Spiritual, more than in Temporal Matters; and that this continued ſo till the Pope did not only uſurp upon the King's Right, but that of the whole Kingdom in general, may appear by thoſe Memorials we have left us, of ſuch Common Councils or Synods, in the Reigns of our firſt *Norman* Kings.

Anno Domini. 1077. *Sub Effigie Fauſtinæ, A.* 3. For the Proof of which, I ſhall begin with the Reign of *William* the Firſt, in whoſe 14th Year the Privileges of the Abbey of *Weſtminſter* were confirmed by that King in a Common Council, as well of all the Clergy, as Laity of the whole Kingdom; as may be proved by a Charter ſtill to be found at large in the old Chartulary of the Abbey of *Weſtminſter*, now in the *Cottonian* Library, collected by *Sulcardus* an ancient Monk of that Abbey, the Concluſion of which Charter of Privileges makes it very plain, of what Members this Council then conſiſted, and who gave their Conſents to the Acts of it, which pray read, *In ſolemnitate Pentecoſtes habito Conſilio in celeberrimo loco præſcripti* Weſtmonaſt. *& à noſtra regia Majeſtate conventis in unum, cunctis Regni noſtri Primatibus, ad audiendas, & confirmandas, quoſdam Synodalis decreti cauſas neceſſarias communi conſenſu maxime Epiſcoporum, Abbatum, & aliorum inſignium Procerum*, &c. *Scripta eſt hæc Charta, & ſigillata & ab ipſo Rege, & ſupradictis perſonis teſtificata confirmat. & auctorizata in Dei nomine*, &c.

This being one of the firſt and moſt remarkable Councils of this King's Reign, I cannot let it paſs without obſerving, Firſt, that all the chief Men of the Kingdom were there, as well of the Clergy as of the Laity; and that the Words *Primates* and *Proceres* here mentioned, are very comprehenſive, and may take in many others beſides your great Lords and Tenants *in Capite*, I have already proved at our laſt Meeting but one. Secondly, Pray obſerve that this Charter of Privileges, tho' all of them concern meer Temporal Things, is authorized, confirmed by the common Conſent and Subſcriptions of all the chief Men, as well of the Clergy as Laity. From all which nothing can appear more plain to me, than that in the Reign of this King, the Clergy and Laity made one Common Council, without whoſe joint Conſents nothing could be tranſacted in the Legiſlative; whether of Eccleſiaſtical or Civil Concernment.

I could give you more Inſtances of this kind in this King's Reign, but I make haſte to that of his Son *William* the Second, in whoſe Seventh Year *Eadmerus* tells us, there was a Common Council held at *Rockingham*, about the Difference between Archbiſhop *Anſelm* and the King; at which were preſent, *Epiſcopi, Abbates, Principes, ac Clericorum, ac Laicorum numeroſa multitudo*; now that by *Principes* or Chief Men, may be here meant many more than your Tenants *in Capite*, I have already ſufficiently proved; and that this *numeroſa multitudo* muſt mean ſomewhat more than thoſe, I ſhall prove farther by and by.

A. D. 1093. *Ead. Hiſt. Nor. L.* 1. *f.* 26. *Spelmani Concil. Vol.* 2. *f.* 26.

In the long Reign of *Henry* the Firſt, I could give you many Inſtances of this kind, but let theſe ſuffice. In the 7th Year of this King, *Bromton* tells us in his Hiſtory (ſpeaking of the Council in which this King gave up his Right of Inveſtitures) *Clero & Populo ad Concilium* Londoniæ *congregato*; and who this *Clerus* and *Populus* then were, he immediately explains himſelf thus, *Aſtantibus, Archiepiſcopis, Epiſcopis, cæteraq; multitudine maxima Procerum, & Magnatum*; under which Words I have already proved, that divers others beſides your Tenants *in Capite* might be comprehended, and their great Number ſhews them to have been more than thoſe.

An. D. 1106. *Col.* 1000. *Spel. Conc. To.* 2. *f.* 28.

But tho' this Author does not here expreſly ſay it, yet that the inferior Clergy were likewiſe at theſe Councils, appears from *Sim.* of *Durham*, and the Continuator of *Florence* of *Worceſter*, *Anno Dom.* 1126. being the 25th of this King, where they both make mention of a Synod or Council held at *London*, at which were aſſembled the Archbiſhops, Biſhops, Abbots, &c. (the Pope's Legate preſiding over the Clergy,) and beſides theſe, *cum innumera Cleri, & Populi Multitudine*. And the Continuator of *Florence* ſhews us the Manner of their giving their Conſents to thoſe Conſtitutions, as well Civil as Eccleſiaſtical, there made and publiſhed; they being propoſed, with a *placet vobis*; and the Anſwer to them is,

Placet,

Placet, *Placet*, *Placet*, thrice repeated; which is very like the Form ſtill obſerved in the Biſhops and Lords giving their Conſent to all Matters propoſed in their Houſe by ſaying *Content*.

So likewiſe the Continuator of *Florence*, in *Anno Dom.* 1127. being the 27th of this King, mentions ſuch another General Council, or great Synod; wherein *William* Archbiſhop of *Canterbury* preſided over the Clergy, and after the Recital of all the Superior Clergy as before, he thus proceeds, *Conſluxere quoq; illuc* (i. e. to *Weſtminſter*) *magnæ multitudines Clericorum & Laicorum, tam Divitum, quam Mediocrium, & factus eſt Conventus ineſtimabilis ſedit etiam tribus diebus, acta ſunt ibi de negotiis ſæcularibus nonnulla, quædam quidam determinata, quædam dilata, quædam vero propter nimium æſtuantis turbæ tumultum ab Audientia judicantium profligata.* And tho' the Author gives us the Eccleſiaſtical Conſtitutions, yet it is plain from him, that Civil Matters were alſo tranſacted in this very Council, which conſiſted as well of the Superior as Inferior Clergy; as alſo of the Nobility, and Commons; which are all expreſſed under the general Words of *Divitum & Mediocrium*, and reſemble the Phraſes of the *Majores & Minores*; and the *des Greindres & des Meindres*, mentioned in the Statutes of *Marlbridge* and *Glouceſter*; which Words were debated at our laſt Meeting. *Vid. Spel. Concil. 2 Vol. F. 35.*

In the Reign of King *Stephen*, there were alſo ſeveral Councils held of the ſame Sort; and particularly that of his Third Year, in which was granted a Charter of Confirmation of this King's, of the Privileges of the Abbey of *Weſtminſter*, which is alſo to be found in *Sulcardus*'s Chartulary above-mentioned; wherein after the general Words of *habito univerſali totius Angliæ conſilio*, and a mention of the Pope's Legate (who preſided over the Clergy;) it follows thus, *affuerunt etiam Comites, Regni mei & Barones quam plurimi, & innumera Cleri & Populi multitudo qui his omnibus interfuerunt, & Religioſo favore voluntatem & Aſſenſſum, Authoritati noſtræ paginæ, & Privilegio præbuerent*, &c. *A. D.* 1138, 1139.

So likewiſe in an ancient Manuſcript Chronicle of the Abbey of *Ely*, under *Anno Dom.* 1139. being the Fourth Year of King *Stephen*, there is a remarkable Paſſage, when ſpeaking of a great Council then held at *London*, he expreſſes it in theſe Terms, *Concilio adunato Cleri & Populi*, (and then explains of what Members theſe did conſiſt, viz. *Epiſcoporum, atq; Abbatum, Monachorum, & Clericorum*) *Plebiſq; infinitæ multitudinis.* Now pray give me leave to make ſome Obſervations from theſe Paſſages in all theſe ancient Charters and Hiſtorians; that beſides theſe Biſhops, Abbots, Earls and Barons of the Kingdom, there were alſo an innumerable Multitude of Clergy and People, or (as the *Ely* Chronicle words it) an infinite Number of Clerks and Commons. Now, pray tell me, what can be meant here by all theſe put diſtinct from the reſt of the higher Orders, but the inferior Clergy, as the Deans, Archdeacons, who were then the only Proxies or Deputies of the Secular Clergy of the whole Dioceſe? And who can be meant by this infinite Multitude of People, or *Plebis*, (which naturally ſignifies the common People diſtinct from the higher Nobility) but the moſt conſiderable Freeholders, or Lords of Mannors, whether Tenants *in Capite*, or not, under the Degree of the higher Nobility, together with the Citizens and Burgeſſes of Cities and Towns; and who came not only as idle Spectators, ſince the Charter I laſt cited expreſly mentions that they were not only preſent, but alſo gave their Aſſents to this Charter of King *Stephen*'s? *Vid. Anglia Sacra f.* 22.

M. And may I not with as good Reaſon ask you why theſe Words *Populus* and *Plebs* may not in the hiſtorical barbarous *Latin* of that Age ſerve only to expreſs (not the Multitude, or Rabble, or meer common People, but) the whole Body of leſſer Tenants *in Capite*, beneath the Dignity of the greater Barons?

F. I will give you two very good Reaſons for that; Firſt, from the great Analogy there was then between the Members of the inferior Clergy, and thoſe of the Laity or Commons; the former of which, even all the Abbots and Priors, Deans and Archdeacons, (except thoſe few that held in *Capite*) with all the reſt of the inferior Clergy already mentioned, holding only *in Frank Almoign*, and not by any Military Tenure at all. Now pray give me any ſufficient Reaſon why the Laity ſhould not alſo conſiſt of all other Orders of Men who did not hold *in Capite* neither, and by whom I do not mean the meer Vulgar, or Rabble, tho' Freemen or Freeholders of ſmall Eſtates, but the moſt conſiderable Freeholders or Lords of Mannors in *England*; or elſe the Knights of Shires, who, I ſuppoſe, repreſented not only themſelves, but their Inferior Tenants whether Copyholders, or for Term of Years; as alſo the Re-

presentatives of all the Cities and Borough Towns in *England*: Now these might together with your Tenants *in Capite*, make so great an Assembly, as might very well deserve the Title (with an easy Hyperbole of *infinita* or *innumera multitudo*) as our ancient Historians express it.

Whereas your Doctor's Tenants *in Capite*, could never in these first Times after this Conquest, amount to so great a Multitude; not being, by his own Confession,
B. A. I. p. 171. above 700 Persons, besides the Bishops, Abbots, and Priors, who did not make above 100 more, which could never deserve the Title of an infinite and innumerable Multitude.

M. Neither your Notions nor your Authorities to prove it, do any way satisfy me; for in the first Place your Argument from the Analogy between the Clergy and Laity, who, you say, made up this Assembly, does not hold; for, tho' I grant there might be in that part of it which we call the Convocation, and was then called the Synod, all the Bishops, Abbots, and great dignified Clergymen; yet were not these considered as Ecclesiasticks, Members of the great Council of the Kingdom; but a distinct Assembly from it, which treated only of Spiritual Matters, and together with the Bishops and Abbots made Ecclesiastical Canons, as the Two Houses of Convocation do at this Day; yet meddled not at all in Matters of a meer Civil or Temporal Concern; any more than the Lay Council could meddle with Spirituals. And to let you see that this was true, it is evident beyond dispute, that this Ecclesiastical Synod was often assembled by the Authority of the Pope, or Archbishops of *Canterbury* or *York*, when the Common Council of all the Laity were not summoned at all; and so *vice versa* the Common Council of the Kingdom often met, when the Synod of the Clergy was not convened; as appears by the most ancient Writs of Summons to the Bishops we
Pag. 2. have left us; as particularly, the first Writ of this kind that is upon the Rolls, *viz.* That for the Bishops (which Mr. *Pryn* has printed in the First Part of his Parliamentary Register) in the 6th of King *John*, and which I have cited from the Doctor's Answer against Mr. *Pryn* at our last Meeting; in which Writ, tho' I grant there is a Clause for summoning the Abbots and Conventual Priors, yet there is none for the inferior Clergy.

But in the next Writ, which the same Author has likewise Published, *viz.*
Ibid. Pag. 3. That to the Archbishops of *York*, there is no Clause at all for summoning any of the Clergy as such, tho' 'tis true, there is underneath an *Eodem modo scribitur omnibus Episcopis, Abbatibus*, &c. *Comitibus & Baronibus*; which shews that this Writ was not to summon them in their Spiritual but Temporal Capacities. So likewise in the next Writ of Summons to Parliament, we have left us
Pag. 717, 5. on the Roll, which is cited in Mr. *Selden*'s Titles of Honour; as also in the same Parliamentary Register, and in Dr. *B.* against Mr. *P. viz.* That of the 49th of *Henry* the Third, to the Bishop of *Dureſme*, without any Clause of Summons to
Id. p. 6. the Clergy, whether Abbots or others. So likewise in the next Writ of Summons that is left us, *viz.* That of the 23d of *Edward* the First, (published also by Mr *Pryn*) to the Archbishop of *Canterbury*, in which there is no Clause of summoning any of the Clergy; and tho' there immediately follows another Writ of the 23d of this King, in which I grant there is this Clause of *Præmunientes Priorem*, &c. *viz.* The Prior, Chapter, and other of the Clergy of his Diocese, to appear in Parliament; yet that they were no necessary part of it, but only of the Convocation, appears by the rest of the Writs of the Summons to Bishops, which Mr. *Pryn* has also given us in that Chapter; all which if you please to peruse, you will find, that in near 200 Writs to Parliaments or great Councils, the Clause of *Præmunientes Clerum*, is to be found in scarce half of them; which shews that the summoning or omitting them depended wholly upon the King's Pleasure, and so were no constituent part of the great Council or Parliament, as you suppose they were under the first *Norman* Kings; for then sure they would not have been omitted to have been constantly summoned in all Parliaments, as well as the Bishops and Abbots.

But to come to your next Argument from the Numerousness of these Assemblies, which you say could not be properly called *Numerosa*, or *Infinita Multitudo*, whereas all the Tenants *in Capite* as well Ecclesiasticks as Lay-men, did not amount in all to 800; there may be an Allowance made for this to the Monkish way of writing of those Times, who might call such a great, or more than ordinary Assembly of the Clergy and Tenants *in Capite*, an innumerable or

infinite Multitude, when indeed they were but few more than our Lords and Commons are at this Day.

Fr. I pray, Sir, give me leave to answer what you have already said, before you proceed any farther, because what I have to reply to it, will be pretty long. In the first Place, you cannot with any reason (if you better consider of it) deny, that the Clergy, as well the Superior as Inferior, did, before your Conquest as well as long after, make but one Assembly or Body of a General Council; tho' sometimes sitting in several Places (as the Lords and Commons do at this Day) for the Words in the Old Book of *Ely*, are *Adunato Concilio Cleri & Populi*, which is to be rendred, the Council of the Clergy and Laity, being united and joined together, as I have already shewn this Word *Adunato* does always signify; as also by the Confirmation of that Charter of King *William*'s to the Abbey of *Westminster*, and to which (tho' a Matter of meer Temporal Concernment) all the Clergy, as well as Laity, gave their joynt Consents, as appears by the Conclusion of that Charter, as also to that of King *Stephen*, but now cited; which they could never have done, had they not then made a Part of the same General Council, or Assembly.

Having proved to you that the inferior Clergy did anciently make a Part of the General or Common Council of the whole Nation, I shall now proceed to answer your Objections: 'Tis true, that for a great Part of some Kings Reigns, for want of the Writs of Summons to the Superior as well as to the Inferior Clergy, we cannot certainly tell, tho' we may presume it from the general Words of the Historians, whether the Inferior Clergy were summoned or not; yet this, I think, I may boldly aver, that whereever any ancient Author makes mention of the *Clerus* and *Populus* in general, being present at any such Common Council, it must necessarily mean, not the Bishops, and Abbots, or the Superior Clergy alone, or the great Lords and Tenants *in Capite* only, but those and the Representatives of the whole Nation, both Clergy and Laity taken together; as I think I have sufficiently made out.

Nor is your Objection considerable, from that Writ of the 6th of King *John*, that no Inferior Clergy were summoned, because only the Abbots and Priors are mentioned at the End of it. To this I answer, that (granting it to be a Writ of Summons to a Common Council of the Kingdom, which is not yet proved) the Omission of the Inferior Clergies being summoned, is no cogent Argument to prove they were not there; since for ought as you and I know, there might be other Writs issued to the Inferior Clergy, distinct from those to the Bishops and Abbots; which last used to have distinct Writs to each by themselves; and I may as well suppose these Writs to be lost, as you do that all the general Writs to the smaller Tenants *in Capite*, who were no Barons, and yet were to be all summoned, according to King *John*'s Charter, are all lost. And as for the Abbots and Priors mentioned at the End of this Writ of King *John*'s, they were such as held only *in Capite*, or else such as did not; if the former, this might be only a Council of Tenants *in Capite*, and none other; of which I grant there were many held in those Times, upon Occasion of Wars, Scutages, and other Matters; but if by these Conventual Abbots and Priors summoned by this Writ, you will mean all Abbots and Priors of whatever Tenure; then it appears plainly that this great Council consisted of many other Ecclesiasticks, than what held *in Capite*, and if so, why might not the Inferior Clergy as well make a Part of it?

But as for your next Authority, the Writ of the 49th of *Henry* the Third, which is certainly a Summons to Parliament, in which is no Clause of summoning the Inferior Clergy; this is no more an Argument than the former, since it might not then be the Custom to insert them in the same Writ with the Bishop, to be summoned by him; but they might have general Writs of their own directed to the Clergy of each Diocese. But that all the Inferior Clergy as well as the Superior appeared at divers Common Councils or Parliaments during this King's Reign, (which they could never have done without the King's Summons, tho' the Writs are lost) may appear from that great Council or Parliament of the 9th of *Henry* the Third: Whereto as *Mat. Paris* tells us (in the Place, I have so often mentioned) were summoned *Clerus & Populus, cum Magnatibus Regionis*, or *Regni*, as *Mat. Westminster* words it; and in this Council was given by *omnes de Regno*, the 15th of all the Moveables of all the whole Kingdom. So that these

omnes

omnes de Regno muſt take in all Degrees of Men, and conſequently the Inferior Clergy too; ſince it is certain the Biſhops and Abbots did never repreſent them in the Houſe of Peers, or in Convocation, ſo as to lay any Taxes upon the Inferior Clergy without their expreſs Conſents. And this is the more evident, becauſe this Tax was a 15*th* upon Moveables; and not a Tax upon Land, and conſequently could never be impoſed upon thoſe of the Clergy, (who held in *Frank Almoign*, as all the Inferior Clergy then did, and do at this Day) by the Biſhops and Abbots that held *in Capite*. And that theſe Charters were made by the Common Conſent of the whole Kingdom; (and then certainly by the Inferior, as well as Superior Clergy,) may appear by the Confirmation of the great Charters, as alſo in the Preamble to the Statute of *Articuli ſuper Chartas* (made, the one in the 25th, the other in the 28th of *Edward* I.) in both which it is expreſly recited, that the great Charters of Liberties, and the Charters of Foreſt, were made *per Commun Aſſent de tout le Royalme, en Temps noſtre Pere*; and if by the Common Aſſent of the Realm, then ſure by that of the Inferior as well as Superior Clergy, ſince the Biſhops and Abbots, who ſate there only by their Baronies could never repreſent them.

Rot. Stat. 25. *E.* 1. *M.* 38.

That the Inferior Clergy were alſo ſummoned to Parliament, in the 39th of *Henry* III. appears from the *Annals* of *Burton*, in *Anno Dom.* 1253. Where that Author, (who lived at that Time) relates, that the Inferior Clergy then appearing in Parliament, ſent Meſſengers to the Pope concerning the intolerable Grievances they then lay under; among which, the firſt Grievance ſet forth by the Procurators of the Clergy for the Dioceſe of *Lincoln* is this, *Quod decima beneficiorum ſuorum Domino Regi fuit conceſſa ipſis non vocatis, maxime cum agitur de aliquo obligando neceſſarius eſt ejus expreſſus conſenſus:* By which it appears, that the Inferior Clergy then claimed it as their undoubted Right by the Law of the Land, not to be Taxed either by the King, or the Pope, without their expreſs Conſents; and they contended ſo hard for it, that they have preſerved this Right even to this Day, when they now give their Votes to the Choice of Knights of the Shires; tho' till the late King *Charles*'s Reign, they were never Taxed without the Conſent of their own Procurators in Convocation. And this may ſerve to enlarge your Underſtanding, and to ſhew you in what Senſe the whole Clergy, as well the Inferior as Superior, did anciently make the Third Eſtate in Parliament, which was more Comprehenſive than the Biſhops and Mitred Abbots alone, who ſate in the Upper Houſe only *per Baroniam*, by Reaſon of their Baronies; tho' in the Synod or Convocation of the Clergy, they acted only as Eccleſiaſtical Perſons; where they alſo joined in the making of Eccleſiaſtical Laws, and giving Taxes; which laſt you cannot deny, but to be a meer Temporal Thing.

M. You may be ſo far in the right; yet tho' the Inferior Clergy often joined with the Common Council of the Kingdom, in giving the ſame Taxes, yet this was by, and upon themſelves alone, and they had no hand in making of Temporal Laws, and giving Taxes for all the reſt of the Kingdom; and I challenge you to ſhew me any Precedent within theſe Five Hundred Years, that the Inferior Clergy ever made the Third Eſtate in Parliament, or that their Conſents was ever asked to the making of Temporal Laws; ſince the Biſhops have been always look'd upon till of late, as the only Repreſentatives of the Inferior Clergy in Parliament. How elſe could they be obliged by general Statutes or Acts of Parliaments? Since according to your own Confeſſion, they gave no Votes at the Election of Knights of Shires, but ſince the Return of King *Charles* II. So that if they had ever joined in this Legiſlative Power (as you ſuppoſe they anciently did) I cannot ſee why they ſhould not have kept it to this Day.

F. I grant indeed, it has been otherwiſe between 300 and 400 Years; but that it was not ſo from the Original Inſtitution of the Government, is alſo certain: For that the *Engliſh* Common Councils conſiſted of all Sorts and Degrees of Eccleſiaſticks you muſt allow; ſince before the coming in of the *Normans*, the Biſhops and Abbots did not ſit in the *Mycel Synods*, as Temporal Lords, is generally acknowledged; and yet even after they came to ſit among the Lay Peers in the great Council of the Nation by virtue of their Baronies, the Inferior Clergy alſo gave their Aſſents to the making of Temporal Laws, and giving Taxes; I have proved by ſuch Authorities, as I do not ſee you are able to Anſwer; and for further Proof of this, to ſhew you their coming was continued down to the Reign of *Henry* III. ſee Sir *H. Spelman*'s Councils, Second Volume, where you will find that they were

Pag. 64.

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in that great Council at *Clarendon*, when thoſe famous Conſtitutions were made, as appears by theſe Words in *Mat. Paris* at the end of theſe Conſtitutions. *Hanc Recognitionem, ſive Recordationem de conſuetudinibus & libertatibus in quis Archiepiſcopi, Epiſcopi, Abbates, Priores, Clerus, cum Comitibus & Baronibus, & Proceribus cunctis juraverunt.* So likewiſe at the Council of *Gaintington* in the 34th of this King; *Roger Hoveden* has in his Hiſtory theſe Words, *Dominus vero Rex ſtatim poſtquam in Angliam applicuit magnum congregavit Concilium, Epiſcoporum, Abbatum, Comitum & Baronum, & aliorum multorum Clericorum, quam Laicorum, apud Gaintington.* And *Mat. Paris* in the Year 1185, (being the 31ſt of this King's Reign) mentions a Common Council of the Kingdom then called at *Clerkenwell*, where *Convocatus eſt Clerus & Populus, cum tota Nobilitate*; which Dr. *Heylin* in his Stumbling-Block of Diſobedience thus tranſlates; the Clergy and Commons, together with the Nobility being ſummoned. And in the 1ſt of *Richard* I. *R. Hoveden* alſo tells us of a great Council held at *Pipewel* Abbey in *Northamptonſhire*, where the Archbiſhop of *Canterbury* produced a Charter of King *William* I. *Coram Rege, & Univerſis Epiſcopis, Clero, & Populo.* And an Ancient Charter of *primo* of King *John*, (now in the Archbiſhop of *Canterbury*'s Library) Entituled, *Charta Moderationis feod. magni ſigilli*, recites the ſaid King to have been Crowned, *Mediante tam Cleri quam Populi unanimi conſenſu, & favore.* And tho' the reſt of his Reign was turbulent, yet the Author of the Manuſcript *Eulogium*, quoted by Mr. *Selden*, in his Titles of Honour, mentions a great Council at *London*, in the 16th Year of King *John*, where the Archbiſhop of *Canterbury* was preſent, *Cum toto Clero, & tota ſecta Laicali*, i. e. (ſays Dr. *Heylin* in the ſame Place) " The Clergy of both Ranks and Orders, with all the Laity (called here " *Secta Laicalis*) and the Lords and Commons had then their Places in Parliament. And the Doctor proceeds thus, " And in Poſſeſſion of this Right the Clergy ſtood " when *Magna Charta* was ſet forth by King *Henry* III. Wherein the Freedom, " Rights, and Privileges of the Church of *England* (of which this evidently was " one) was confirmed to them; (*i. e.* the whole Clergy in general.) I have here ſhewed you, what Dr. *Heylin*'s Senſe was; to let you ſee that a Perſon of great Learning, and a high Churchman, thought it no Hereſy to be of our Opinion, and to maintain as he does all along in that Chapter, that the Inferior Clergy and the Commons were a *Conſtituent* Part of the Common Council or Parliament long before the 49th of *Henry* III. and that the Inferior Clergy continued to be ſo, till the Reign of *Henry* IV. at leaſt.

P. 64. Ann. Dom. 1164. P. 641. P. 193. P. 587.

But that their Conſents was alſo anciently asked in the making of Laws, we need go no farther than the Authority I have now given you from the Continuation of *Florence* of *Worceſter*. And farther, that they were once a Part of this great Council or Parliament, beſides the Teſtimony of the *Modus tenendi Parliamentum*, (who tho' he be exploded, as an ancient Author, yet certainly is a good Witneſs for his own Time, *viz.* That of *Edward* III.) where the *Procuratores Cleri* are reckoned among the *Conſtituent* Members or States of Parliament; which is alſo confirmed by the Two firſt Writs of Summons we have left us on the Rolls, *viz.* the 23d of *Edward* I. wherein this Clauſe of *Præmunientes Clerum* is particularly expreſs'd; which pray read from your Doctor's Anſwer to Mr. P. *Præmunientes Priorem & Capitulum Eccleſiæ veſtræ, Archidiaconos totumque Clerum veſtræ Diocæſis faCientes quod iidem Prior & Archidiac. in propriis Perſonis ſuis, & dictum Capitulum per duos Procuratores idoneos plenam & ſufficientem poteſtatem ab ipſis Capitulis, & Clero habentes, una vobiſcum, inter ſint, modis omnibus tunc ibidem, ad tractandum, ordinandum, & faciendum nobiſcum, & cum cæteris Prælatis, & Proceribus & aliis Incolis Regni noſtri qualiter ſit hujuſmodi periculis obviandum.* (*viz.* The Dangers in the Writ mentioned to be threatned from *France*.) And that this was not the firſt Time this Clauſe of *Præmunientes* was inſerted in the Writs of Summons to Biſhops, might be eaſily proved, had we all the Writs of Summons before the 23d of *Edward* I. as well as ſince. But we may hence obſerve, that the Inferior Clergy are not only ſummoned to treat with the Prelates, but are as well as they, here authorized to treat, ordain and act with them, and the Lords and Knights, Citizens and Burgeſſes (for ſo your Doctor himſelf here in the Margin tranſlates, *Aliis Incolis Regni.*) And how they could thus conſult and act with them, if they had not been then, as well as the Prelates, a Part of the ſame Body of the great Council or Parliament of the Kingdom, I confeſs ſurpaſſes my Capacity to underſtand. Nor is this Clauſe found in this Writ alone, but alſo in the Writs of the Biſhops Summons

Rot. Clauſ. 4. dorſo. B. A. P. p. 155.

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to Parliament as low as our own Times. And that these Writs were not a Convo-
P. 120. cation, but Parliament, appears in *Pryn*'s Parliament Register plainly, by the Letters of Procuration made by the Prior and Chapter of *Bath* to *William Swynham* and *John de Merston*, appointing them to appear and act for them as their lawful Procurators in the Parliament summoned *Anno Dom.* 1299. being the 27th of *Edward* I; which is of a different Form from another Letter of Procuration of the same Prior and Chapter, *Anno Dom.* 1295. (31 *Edward* I.) to their Procurators therein named to act for them in the Convocation then summoned at *Westminster*; the same Difference is also observed in all the Writs of Summons to Convocation, different from those whereby the same Persons are summoned to Parliament; the former being directed only to the Two Archbishops, or their Vicar-Generals, to summons all the Bishops, Abbots, Priors, and Clergy of their respective Provinces; without any particular Writs issued to any other Bishops, Abbots, Priors or Clergymen, as in Summons to great Councils or Parliaments; wherein there are commonly particular Orders to the Bishop to warn all the inferior Clergy
P. 166. in the manner but now mentioned; as Mr. *Pryn* very well observes, in his First Part
P. 60, 61. of his said Parliamentary Register; where you may see, there is a Writ of Summons
Rot. Claus. 31. Edw. 3. to Parliament, of the 31st of *Edward* III. to the Archbishop of *Canterbury*, reciting
m. 21. *Dorso.* that he intended a Parliament, for divers arduous and urgent Businesses concerning Himself and Crown, and the necessary Defence of the Kingdom and Church of *England*; and then proceeds thus, *Et quia Negotia prædicta per quam Ardua sine Maxima deliberatione tam Prælatorum & Cleri quam Magnatum, & Communitatis ejusdem Regni*, &c. And therefore it behoved him to summon the said Clergy, Great Men and Commons; and then requires him to summon all the Bishops, Abbots, Deans, and Priors, and Archdeacons, to appear personally, and the rest of the Clergy by two Procurators; with full Power *ad tractandum, & consulendum super præmissis una vobiscum, ad consentiendum. Illis quæ tunc ibidem super dictis negotiis divina favente Clementia contigerit ordinari.*

M. But what can you say to their being omitted to be summoned in divers Writs to Parliament, as appears in *Pryn*'s Register you now cited; and from whence himself has there made this Observation, "That there is no Clause of
P. 107. "*Præmunientes*, &c. in any Writs of Summons to Councils of State, but only to "Parliaments, and that not always, but at the King's Pleasure. Which shews plainly, that tho' they were sometimes summoned as a Part, yet were certainly no essential *constituent* Part of this general Council, since they were omitted in so many of them; and had they been always a Part of this great Council; pray tell me, how they came to lose this Right; since the Clergy in those Days were not wont to lose any Right or Privilege they enjoyed.

F. I have already granted, that tho' the inferior Clergy have been no necessary *Constituent* Part of Parliament, for divers Ages last past, yet does it not follow, that therefore they never were so; since they have lost this Right by Degrees. And I shall now shew by what Steps it might have happen'd. First, therefore pray observe, that anciently all Abbots, and Priors whatever, as well those that held *in Capite*, as those that held in *Frank Almoign*, were all summoned alike to the general Councils of the Kingdom; as appears by the first Councils after your Conquest, that we have any Monuments of; nay it also appears from that very Writ of the 6th of King *John*, (if it were a Writ of Summons to Parliament) which as I have already proved at our last Meeting it is most likely it was not, whereby the Bishop is to summon all the Abbots and Priors of his Diocese, none excepted. And tho' I grant that in the next Writ of Summons of the 26th of *Henry* III. to the Archbishop of *York*, there is no Clause expressed of summoning the Abbots and Priors, and other Clergy of his Diocese, yet it is much to be doubted, whether this were a Summons to Parliament, or not, being without any Title either of *ad Parliamentum* or *Concilium*.

But that the Abbots and Priors, as well those that held *in Capite*, as those that held in *Frank Almoign*, were summoned to the great Parliament of the 49th of *Henry* III. appears by that List of their Names, which both Mr. *Pryn*, and the Doctor
Parliament Regist. Part 1. *p.* 106. 108, 109, 110. have printed from the Roll. Nor do I believe that this was the first Time that all
B. A. P. p. 138, 139. these Abbots and Priors, being 101 in all, were summoned to Parliament, notwithstanding your Doctor's Fancy, that *Simon Montfort* summoned so many of them, only because he was sure of them; since if we had the Rolls of the foregoing Years, as well as of this, we should perhaps find little or no Difference. For by another

another Liſt of the Abbots and Priors, which the Dr. himſelf has given us of the 23d of *Edward* I. to the ſame Parliament above-mentioned, when the Inferior Clergy were likewiſe Summoned; there appears to have been Seventy Abbots and Priors ſummoned to this Parliament, of which not a third Part ever held *in Capite*; and tho' divers of them then pleaded Exemptions, yet they were many of them ſuch as held *in Capite* as well as thoſe that did not; as the Abbots of St. *Edmund's-Bury*, *Waltham*, St. *Albans*, *Eveſham*, &c. all which, as it is notoriouſly known, held *in Capite*, and were commonly ſummoned to all Parliaments afterwards. Now pray ſee how all this numerous Train of Abbots and Priors (which Mr. *Pryn* confeſſes to have ſometimes amounted to 122) who were ſummoned to ſome Parliaments and great Councils, came to be omitted; which is to be aſcribed chiefly to their own Petition and Deſire, when their conſtant Attendance in Parliament when held every Year, and frequently oftner, was counted a Burthen rather than an Advantage, by reaſon of the great Charge and Trouble of coming to thoſe Aſſemblies, and their being bound to contribute to the general Aids that were then given the King. And thence it is we find on the Rolls ſo many Diſcharges upon their Petitions in Parliament, that they did not hold of the King by Barony, nor *in Capite*; nay the Abbot of *Leiceſter*, after having ſerved in no leſs than 50 Parliaments, yet in the 25th of *Edward* III. procured a Writ of Exemption from the King, *Quod non compellatur venire ad Parliamentum*; the Lords in Parliament eaſily giving way to it, ſince they knew that the fewer Hands the Legiſlative Power was reduced to, the greater ſtill were theirs that remained. To which may be added the King's Pleaſure, who by Degrees began to omit ſummoning of divers of the ſmaller Abbots and Priors, before ſummoned; ſince it has been the Policy of divers of our Kings to reduce their great Councils or Parliaments, eſpecially the Peers, into as few Hands as they could, becauſe then they are moſt eaſily managed; and the Abbots and Priors never complained of it, for the Reaſons already given. Thus moſt of theſe came to be ſtruck off by Degrees, till at laſt, of all this numerous Company of Abbots and Priors, there were in the Reigns of *Edward* III. *Richard* II, and *Edward* IV. and even to the Diſſolution of Monaſteries under *Henry* VIII. no more than 25 Abbots and Two Priors, *viz.* the Prior of *Coventry*, and of St. *John* of *Jeruſalem*, ſummoned to Parliament. I have dwelt the longer on the Hiſtory of theſe Abbots and Priors, becauſe it ſufficiently confutes your Doctor's Notion, of none but Tenants *in Capite*, appearing in Parliament.

Ibid. 156, 157.

Parliament Reviſt. 141.

Ibid. p. 142. *Vid.* Selden's *Titles of Honour*, p. 731, to 735.

Ibid. 141.

But to give you ſome Account of the Inferior Clergy, how they likewiſe might come to be often omitted out of the Writs of Summons to great Councils, and not to make a conſtant Part of the Parliament, but only of the Convocation. This might happen two or three ways, and that without any poſitive Law for it. As in the firſt Place, pray conſider the vaſt Increaſe of Power which fell to the Biſhops, after *Henry* I. had given up his Right of Inveſtitures to the Pope; by which means they depended not at all on the State, and ſo took upon themſelves a greater Power of impoſing upon, and making Temporal Laws for the Inferior Clergy in Parliament, as if they had been their Repreſentatives; yet they could never repreſent all the Abbots and Priors, who held in *Frank Almoign*, for the Reaſons already given, as alſo becauſe moſt of them were exempted from their Juriſdiction: But that the Biſhops could never impoſe Taxes upon the Inferior Clergy at their Pleaſure, without their expreſs Conſents in Parliament, or Convocation, appears by this memorable Writ of 9th of *Edward* II. to the Archbiſhop of *Canterbury*, which Mr. *Pryn* has likewiſe given us; by which it appears, that divers of the Clergy had conſented to grant the King a Subſidy in the precedent Parliament, but only by Reaſon of the Abſence of the ſaid Archbiſhops, and others of the Prelates, and Clergy, it could not then be done; and therefore the Archbiſhop is thereby ordered to call a Convocation for that Purpoſe; which had been needleſs, if the Biſhops alone could have taxed the Inferior Clergy in Parliament or Convocation, without their expreſs Conſents: So that it is plain, that in that Age they ſtill retained a great Share of the Supream Power, *viz.* of not being taxed, unleſs by Repreſentatives of their own, either in Convocation or Parliament; as it continues to this Day.

Ibid. p. 154.

But to ſhew you farther, how the Preſence of the Inferior Clergy, and conſequently their ſummoning to Parliament, became leſs neceſſary, we muſt have recourſe to the Bull of Pope *Boniface* the 8th in the 24th of *Edward* I. by which he forbad all the Clergy of the *Weſtern* Church, as well Superior as Inferior, to give

any more Taxes or Subſidies to Temporal Princes, without his Holineſs's Licenſe; whereupon the King ſummoned the Biſhops and Clergy to Parliament, at St. *Edmund's-bury* in the 24th of his Reign; where when they then refuſed to grant him any Supplies, he then, (as all the Hiſtorians tell us,) held his Parliaments at *Weſtminſter*, *Cum Baronibus ſuis, excluſo Clero*, without either Biſhops, Abbots or Inferior Clergy. Which was the firſt Precedent of this Kind, that we ever read of in this Parliament; the King with the Conſent of the Lay Lords and Commons ſeized all the *Temporalties* of the Clergy, as well Biſhops as others, and put them out of his Protection, until they were forced to redeem themſelves by paying a 5th Part of their Moveables: for doing of which they were afterwards forced to procure the Pope's Abſolutions; ſome of which Mr. *Pryn* has given us in his ſaid Regiſter; and yet for all this, the Pope maintained this Power over the Clergy for the future; ſo that they could not be taxed without his expreſs Licenſe, (which ſince it could not always be obtained) no wonder if our Kings did more frequently omit ſummoning any more than the Biſhops, and Abbots, who were bound to appear in Parliament by their Tenures; and ſo left out all the inferior Clergy as uſeleſs: The main Buſineſs, and Cauſe of their ſummoning to Parliament, *viz.* giving of Money, being now taken away by the Pope's uſurped Power. Tho' whenever his Licenſe was obtained, yet that their own expreſs Conſents in Parliament or Convocation was neceſſary to this end, appears by that Paſſage in the Annals of *Burton* in *Anno* 1255. already cited; when the inferior Clergy being extravagantly oppreſs'd between the Pope and King, they ſent expreſs Meſſengers when they met in Parliament, who were to ſet forth their Grievances to his Holineſs. I have given you as good an Account as I am able, how the Inferior Clergy, which as well as the Superior, did once make a *Conſtituent* Part of our great Councils before the Conqueſt, nay for above 200 Years after, did at laſt ceaſe to be ſo, partly by the prevailing Power of the Biſhops, partly by the Uſurpation of the Pope; tho' chiefly by their own Silence and Conſent, not complaining of their want of Summons to Parliament, as long as they could 'ſcape Scot-free, and all the reſt of the Kingdom pay Taxes. Notwithſtanding which, the Clauſe of their acting and conſulting with all the reſt of the Eſtates in Parliament, ſtill remaining in the Writs of Summons, is a ſufficient Monument to Poſterity, to prove their ancient Right.

Vid. Mat. Weſt. Ann. 1296. *p.* 405 *to* 408. *Chron.* Will. Thorn. *Col.* 1965. *Walſingham. Anno Dom.* 1296, 1297.

And the Clergy of the Lower Houſe of Convocation was ſo ſenſible of this, that among certain Petitions by them made to Dr. *Cranmer* then Archbiſhop of *Canterbury*, and the reſt of the Prelates in the higher Houſe of Convocation, in the Reign of King *Edward* the Sixth, and the Second Article of which runs thus, "Alſo that according to the ancient Cuſtom of the Realm, and "the Tenor of the King's Writ for ſummoning of the Parliament, which now "and ever have been directed to the Biſhop of every Diocele, the Clergy "of the Lower Houſe of Convocation may be adjoined; and aſſociate with "the Lower Houſe of Parliament; or elſe, that all ſuch Statutes and Ordi-"nances as ſhall be made concerning all Matters of Religion, and Cauſes "Eccleſiaſtical, may not paſs without the Sight and Aſſent of the Clergy. And there is in the ſame Place a Second Petition; as alſo a Paper of Reaſons offered to Queen *Elizabeth*, and after to King *James*, to the ſame Effect.

Vid. Dr. Burnet's *Hiſtory of the Reformat. in the Collection of Records, ex MS.* Dr. Stillingfleet, *p.* 117.

Ibid. p. 118, 119.

And laſtly, to ſhew you, that the Government of the Church and State of *Scotland* was anciently all one and the ſame in reſpect of their Clergy as well as Laity, with that of *England* in their great Councils or Parliaments, appears by the Agreement between King *Edward* the Firſt, and the States of *Scotland*, concerning the Matriage of his Son Prince *Edward* with the Princeſs of *Norway* then Heireſs of *Scotland*, which is publiſhed at large in Mr. *Pryn*'s Firſt Volume of the Pope's Uſurpation, where you will find this Agreement to have been made between the ſaid King *Edward ex una parte, & venerabiles Patres cuſtodes*, (ſcil. Scotiæ) *Epiſcopos, Abbates, & totum Clerum; nobiles viros, Comites & Barones, totamque* Communitatem *Regni* Scotiæ, *ex altera, de matrimonio contrahendo*, &c.

P. 396.

From whence you may obſerve, that as the ſame Stile was obſerved there in the Titles of their general Councils or Parliaments as with us; and as the inferior Clergy there put after the Biſhops and Abbots did not hold *in Capite*, but *Frank Almoign* in that Kingdom; ſo likewiſe by the ſame Analogy between the loweſt Temporal State with the Spiritual, the Commonalty of *Scotland* here ſtiled *Communitas*

munitas Scotiæ could not then conſiſt only of Tenants *in Capite*, as your Doctor, and thoſe of his Opinion ſuppoſe it did.

M. I muſt confeſs you have ſhewn me more for the Inferior Clergies being once a *Conſtituent* part of the Parliament, than ever I knew before; I will take Time farther to conſider them: But that the Word *Populus* muſt needs then take in any more than the Tenants *in Capite*, I much doubt; ſince the other Word *Plebs*, which you ſo much inſiſt upon from the old Book of *Ely*, ſignifies no more than *Populus*, which as the Doctor ſhews us in his *Gloſſary*, " in it ſelf ſignifies nei- *B. G.* p. 24.
" ther great nor little People, but only Laity; and therefore as it is uſed and re-
" ſtrained, ſignifies either the Lay *Plebs*, or the Lay *Magnates*, as I can ſhew you
" by ſeveral Examples; as particularly out of *Mat. Weſtminſter*, *Anno Dom.* 1295, *Fol.* 424. *N.* 30.
" 23d *Edward* I. where ſpeaking how the Pope's Legates were received in *England*,
" who came to make up the Differences between *England* and *France*; he thus
" relates their Reception, *Quos in Regno Angliæ applicatos excepit Plebs debito*
" *honore, ac cita per Regem apud Weſtmonaſterium Primatum, & Optimatum ſuorum*
" *Caterva.* Here the *Plebs* were the Great or Chief Men of the Laity; that is,
" the Earls and Barons which he had called to *Weſtminſter*, who ſo honourably
" received theſe Two Cardinals.

So likewiſe the ſame Author, *Anno Dom.* 1297. 25. *Edward* I. " The King *Fol.* 430.
" and Barons being at ſome Difference about the Obſervation of *Magna Charta*,
" and the Charter of Foreſt, ſpeaking how the King declared that he intended to
" obſerve thoſe Charters; after this he relates, that the King thereupon required
" to be given him by the *Incolæ* or Inhabitants, the Eighth Penny; and ſays thus,
" *Articulos in prædictis Chartis Contentos, innovari inſuper & obſervari Rex Man-*
" *davit, exigendo pro hac Conceſſione ab Incolis Octavum denarium ſibi dari, qui mox*
" *Conceſſus eſt a* Plebe, *in ſua Camera tunc Circumſtante; petit etiam a Clero ſubſi-*
" *dium. Qui reſpondit ſe velle ſummo Pontifici Literas Supplicatorias dirigere pro*
" *Conferendi Licentia obtinenda.* So that the *Plebs* here mentioned by the Hiſto-
" rian were only the Lay Nobility that ſtood about the King in his Chamber. Now
" pray conſider, that the Word *Plebs* is of a much more vulgar Signification than
" *Populus*, ſo that if the former did not ſignify the Commons as now underſtood,
" the latter cannot do ſo. And therefore I ſee no Reaſon to ſuppoſe that theſe
" Words muſt ſignify the Commons. The like Error, I muſt tell you by the way,
the Gentlemen of your Opinion have fallen into, concerning the Word *Vulgus* in
the old Coronation Oath in *Latin*, when they ignorantly Tranſlate theſe Words in *B. G.* p. 34.
the old *French* Oath, *les leys les quelles ly la commuante aura eleu, leges & Conſue-*
tudines quas vulgus elegerit, to the great Confuſion of this Nation in the beginning
of the late Troubles: Whereas the Community here underſtood in this Oath,
was the Community of the Biſhops and Abbots, Earls and Barons, and great Men,
and the whole Body of Tenants *in Capite*; expreſſed before in this Oath by *Clerus*,
and *Populus*; for by them alone could theſe Demands be made for the *Vulgus*; *i. e.*
the Multitude or Rabble could never come near to make theſe *Demands at ſo great*
and ſplendid a Solemnity.

F. This is but to urge the ſame Thing over and over again; for that under the
Word *Populus* were alſo comprehended the Commons, I have already ſufficiently
proved, and can yet prove it further, from divers Hiſtorians and Records, both of
Henry III. and *Edward* I. and *Edward* II. Reign. In the Firſt Place therefore I
muſt ſtill put you in mind of that Paſſage ſo often cited from *Matt. Paris*, in the *Fol.* 323.
9th of *Henry* III. where the Members of that Common Council in which *Magna*
Charta was granted, is ſaid to be *Clerus & Populus cum Magnatibus Regionis*; or
as *Mat. Weſtminſter* in the ſame Year, almoſt in the ſame Words, *Clerus & Popu-* *Fol.* 284.
lus cum Regni Magnatibus; with both which alſo agrees the Manuſcript Hiſtory of
Walter of *Coventry*, who ſpeaking of this very Council of 9th of *Henry* III. relates
it thus; At the Purification of the Virgin, there aſſembled at *London* the *Proceres*
Angliæ ibique tractatu diffuſiore habita cum Clero & Populo, the King then granted
the Liberties of the great Charter, and that of Foreſts; and that there was granted
à Comitibus & Baronibus, Clero, & Populo, ibidem Præſentibus quinta decima omnium
mobilium de Communi Aſſenſu. Whence pray obſerve, what I before minded you
of, that this Tax, as it was a general one upon all the Moveables of the Kingdom,
took in all Sorts of Perſons, and ſo could never be given by the particular Order
of the Doctor's Tenants *in Capite*, ſince it did not concern Tenures at all; and was
levied on thoſe that did not hold by Knights Service, as well as upon thoſe that did.

But the Author of the *Annals* of the Abbey of *Burton*, is more full in this Point; for in *Anno Dom.* 1255, being the 39th of *Henry* III, he tells us, a Parliament was held at *Weſtminſter*, *Convocatis ibidem Epiſcopis, Abbatibus, Prioribus, Comitibus, & Baronibus, & totius Regni Majoribus, in quo petebat* [Rex] *a Clero & Populo, de Laicis feodis ſuis ſibi ſuffragium exhiberi*, &c. (*viz.* For the Buſineſs of *Sicily*;) and then goes on thus, *diſponens de ſuo iniquo Conſilio hoc prius a Clero, & poſtmodum a Populo Majori & Minori extorqueri.* From which Paſſage I ſhall obſerve, *Firſt*, That all the Clergy in general, as well the Biſhops and Abbots, as Inferior Clergy, are here ſtiled *Clerus*. *Secondly*, That the Nobility and Commons, or whole Body of the Laity, are all together called *Populus*. *Thirdly*, That this *Populus* is there alſo diſtinguiſhed into the *Major*, and *Minor*; now as by the *Major* can be meant none but the greater Nobility, ſo the *Populus Minor* can ſignify none, but the Commons in general; unleſs you will ſuppoſe that the King's Deſign was only to extort Money from the Tenants *in Capite*, and no others.

But to put it farther out of all Diſpute, that this Word *Populus*, when put after and diſtinct from *Magnates Barones*, and the like, in our Ancient Hiſtorians and
M. 20. Records, does ſignify the Commons alone; I ſhall prove to you by the Patent Roll of the 19th of *Edward* I. (the Year after your Doctor ſuppoſes the Commons were called to Parliament) where there is a Writ directed, *Baronibus, Militibus, & Liberis Hominibus de Wallia*, reciting that the *Comites, Barones, & Populus de Regno*, had lately freely granted a 15th of all their Moveables, and therefore deſires like Aid from the *Welch*; now nothing can be plainer, than that by *Populus* in this Record muſt be meant the Commons; and yet it is alſo as evident from another Record now in the keeping of the Remembrancer of the *Exchequer*, that this 15th was granted the Year before in the 18th of this King (the very Time whence Dr. *B.* dates the conſtant Summons of the *Commons* to Parliament;) for by this Writ, or Commiſſion, he appoints Commiſſioners for the Collecting of that 15th of all Moveables; which the King thus recites the *Archiepiſcopi, Epiſcopi, Abbates, Priores, Comites, Barones, & omnes alij de Regno, nunc ſicut alias de nobis & Progenitoribus noſtris liberaliter fecerunt*, to have lately freely granted him; which can be no other than that mentioned in the Record of the 19th; unleſs you can ſuppoſe that there was a 15th granted Two Years together, which is very unlikely, and more than the Nation could then well pay.

M. 20. So likewiſe by the Parliament Roll of 1 *Edward* III. it appears that *Hugh le Diſpencer*, Jun. had been in the Reign of his Father, *Per Conſiderationem Parium, & Populi Regni, & per Aſſenſum Domini Edwardi tunc Regis Angl.* exiled and diſinherited for ever, as a Traytor to the King and Kingdom; that is, he was baniſh'd by the joint Conſent of King, Lords and Commons. Now if *Populus* in theſe Records ſignifies the Commons after the Time you own they appeared in Parliament, I would be glad to ſee ſome better Reaſons than you have hitherto given me, to prove that this Word could not have the ſame Signification before the 49th of *Henry* III. or 18th of *Edward* I. Though I grant that *Populus* does alſo ſometimes ſignify both Lords and Commons; as appears from *Mat. Weſtminſter*, where relating how King *Edward* I. in the 24th Year of his Reign, made his Son a Knight, then he tells us, *Pro hac Militia filij Regis Conceſſus eſt Regi Trigeſimus Denarius à Populo & Clero, Mercatores verò Viceſimum conceſſerunt.* Yet that the Commons had alſo a ſhare in this Grant, the Doctor himſelf acknowledges in his *Gloſſary*, under the ſame Heads in theſe Words; "It is evident from this Record, (meaning "that of the 34th of *Edward* I. above-mentioned) who were the *Populus*, or Peo-"ple intended by the Hiſtorian in this Place, to wit, the *Comites, Barones, & alij* "*Magnates, nec non Milites Comitatuum.* Now I deſire to know whether the Knights of the Shires were not then Commoners as well as now, though reckoned among the *Magnates*, and as a Superior Order to the Citizens and Burgeſſes, here called by a general Word *Mercatores*, who then gave a 20th Part of their Moveables by themſelves?

But that the Word *Plebs* does not only ſignify the Lay Nobility, but the Commons too, in both the Quotations you have made uſe of out of *Mat. Weſtminſter*, is alſo as plain; for in the firſt Inſtance concerning the Reception of the Legates, is it to be imagined that none but Earls, and great Lords accompanied them, and that there were no Knights or Gentlemen amongſt them? And as for the words *Primates*, and *Optimates*, I think I have ſufficiently proved that thoſe do not only ſignify the Lords, or greater Nobility, but the leſſer alſo: Nay, the Chief Citizens, and Magiſtrates of Cities and great Towns.

As

As for the next Authority concerning the *Plebs* that granted the Eighth Penny, it is much more evident that the Commons, as well as the Lords, muſt be comprehended under that Term. And that this is ſo, I need go no further than the Doctor's own Conceſſion in the ſame Place a little farther, which you may read in theſe Words; *And that the Agreement for the Confirmation of the Charters here mentioned was made, and the Eighth Penny granted by the Earls and Barons, and perhaps the* Knights of Shires; *and that they were the* Plebs *that ſtood about the King in his Chamber, is clear from the Writ of Summons of Parliament for Two Knights in every County, Dated* September *the* 15*th immediately following, to come and receive the Confirmation of the Charters and his Letters, that the paying of this Eighth Penny ſhould not prejudice the Commons for the future; and to do further what by his Son and his Counſel ſhould be Ordained.* So that the Doctor himſelf is forced to confeſs, (tho' ſparingly) that the Knights of Shires were likewiſe there, and comprehended under the Word *Plebs* at the Time of this Grant. The King held this Parliament at his Palace of *Weſtminſter*, in ſome of the Halls or great Rooms, and the Commons might very well ſit in the now Court of *Requeſts*, (then called the *Alba Aula*, or *White-Hall*) (where Parliaments have been frequently held) and from thence be ſent for by the King into the *Painted-Chamber*, or now Houſe of Lords, where the King then ſate; and which might, in reſpect of the Hall from whence they came, be very well called, *Camera Regis*; for none can imagine his Preſence-Chamber, or Bed-Chamber, could hold all that Company; and in that Room the King might make that Speech to them which this Author mentions; and then upon his promiſing to renew the Charters, followed the granting of the Eighth Penny *ab Incolis*, by the whole People, who immediately granted the ſaid Subſidy. Now the Doctor grants in this Place, That the *Incolæ* here meant by the Hiſtorian were the *Incolæ* Regni, *ſuch Inhabitants as uſed to pay Subſidies and Aids*; only the *Plebs* muſt here ſignify the Lay Nobility. Now, if the *Incolæ Regni* were ſuch as uſed to pay Aids and Subſidies, who made this Conceſſion, can any Man doubt, but that this Grant was made by their Repreſentatives, or the Knights, Citizens and Burgeſſes? For if the Tax was general upon the whole Kingdom, (as it appears it was) can you imagine that the Citizens and Burgeſſes were not there preſent when this Tax was given, as well as the Knights of the Shires; ſince it was to be levied upon all alike? Nor is the Doctor's Objection of any Weight, *That becauſe the King not long after Summoned another Parliament when he was beyond Sea, to meet his Son Prince* Edward *at* Weſtminſter; *that therefore it was not probable, that if the Commons had been at the Agreement, and granting of the Eighth Penny in the King's Chamber, they would have been diſmiſſed, and called again about the ſame Buſineſs in ſo ſhort a Time, ſeeing the Confirmation of the Charter was diſpatched in Six Days, when the Parliament met* October *the 6th.* For the Doctor is very much miſtaken to imagine that this was the ſame Buſineſs they met about before, when the very Writ of Summons ſhews the contrary. For the Tax was given already, and therefore they could not meet about that; but the Truth was, the King went away in Haſte into *Flanders*, without confirming the Charters. So that before the People would give any more Money, his Son, Prince *Edward*, was forced to confirm them, (as the Doctor himſelf confeſſes in the ſame Place,) after the Confirmation of theſe Charters, and that the Earls and Barons were ſatisfied. But as for the Doctor's wondrous Diſcovery of the falſe bad Tranſlation of the old *French* Coronation Oath, I do ſo far indeed agree with him, that the Words *le Commune aura elu*, are not to be Tranſlated, which the Commons, or Vulgar People, but the whole Community ſhall chuſe; rendred here by the Word *Vulgus*, by the Old *Monkiſh* Tranſlator: yet this can by no means ſignify only the Biſhops, Abbots, Lords, and Tenants *in Capite*; (for who ever knew the Word *Vulgus* to ſignify the Superior Clergy and Nobility?) and ſo to exclude the whole Body of the People in general. But *Mat. Weſtminſter* tells us, *Conceſſus eſt* (viz. to *Edward* I.) *Novenarius Denarius à Vulgo, à Clero vero Denus ad Scotorum Pertinacium reprimendam*, who had then invaded *Northumberland*, and haraſſed the other *Northern* Counties. Now pray read the Doctor's Comment upon theſe Words in his *Gloſſary*. *Here* Vulgus *is the ſame with* Populus *and* Plebs, *when oppoſed to* Clerus, *or joined with it as a diſtinct Body of Men*; *and* Clerus & Populus, Clerus & Plebs, Clerus & Vulgus, *are the* Clergy *and* Laity, *in the Meaning of this Hiſtorian*; *whether the Earls and Barons alone, or the Temporal Earls and Barons with the Commons were underſtood by them*; *that is, the Commons repreſented in Parliament, and not the Multitude or Rabble.* Which

Ibid. p. 28.

Fol. 431. *N.* 10.

Pag. 25.

indeed is a worthy Diſcovery of the Doctor's. Nor do I know any body ſo mad as to render it in the Coronation Oath; but that this Word *Vulgus*, when put for the whole Laity of the Kingdom, is very ancient in that Oath, ſee the Old Coronation Oath in *Tottle*'s Collection of old Statutes, who tranſcribed it out of ſome Ancient *Latin* Copy of that Oath, or elſe from that Clauſe in the Coronation Oath of King *Richard* II. which is ſtill to be ſeen upon Record.

I beg your Pardon for ſpeaking ſo long upon the true Signification of theſe Words *Clerus* and *Populus*, *Plebs* and *Vulgus*, ſince there was a Neceſſity for it, by reaſon of thoſe falſe Gloſſes that the Doctor has with ſo much Artifice put upon them, ſtill uſing them like Charms to bewitch and impoſe upon his unwary Readers; eſpecially ſince a right Notion of theſe Words is abſolutely neceſſary for the right underſtanding the true Senſe and Meaning of our Ancient *Engliſh* Hiſtorians. So that after all this Pother the Doctor makes about the Signification of theſe Words *Populus*, *Plebs*, and *Vulgus*, as Synonimous as he grants them to be, they muſt all ſignify the whole Body of the People, as well the Commons as the Lords, repreſented in Parliament, by his own Confeſſion; or elſe, I leave it to your ſelf to conſider, who of the Two is guilty of levelling Notions, your Doctor or Mr. *P.* ſince one does but aſſert with the general Conſent of Ancient and Modern Writers, that the Words *Barones* and *Baronagium Angliæ* did anciently take in more than the Lords, and Tenants *in Capite*. And the Doctor ſtraight calls him a Man of Levelling Principles, and that jumbles the Commons together with the Lords. Whereas your Doctor can when he pleaſes, make the Words *Plebs* and *Vulgus* to ſignify the great Lords, and Tenants *in Capite*, contrary to the Subject Matter on which he diſcourſes, and to their Genuine Signification, either in Ancient or Modern *Latin*.

M. Yet notwithſtanding what you have now ſaid, methinks you have not been yet ſo clear in your Explanation of the Word *Populus*; for admitting I ſhould grant you, that there were in ſome ſort Commons in Parliament as repreſented by the leſſer Tenants *in Capite*, who were not Lords; yet does it not therefore follow that there muſt have been another Rank or Order of Perſons beneath, or different from them, ſince (as I ſaid it is, but now) 'tis only the Cuſtom, and Law of each Country, that can determine what is the Community, or Repreſentative Body of the People; ſo that there is no ſuch certain Analogy between the *Clerus*, when taken for the Inferior Clergy, and the *Populus* when taken for the leſſer Nobility, or Tenants *in Capite*. Since in *Scotland*, though their great Council or Parliament, might conſiſt of the Abbots, and Inferior Clergy, as with us, who did not hold *in Capite*; yet you cannot deny, but that the Temporal Eſtate or Laity, (at leaſt of late Ages) wholly conſiſted of the Earls, Barons, Lairds, or ſmaller Barons, together with the Burgeſſes of Royal Boroughs, all which held *in Capite*; and for ought as I can ſee from any clear Proofs you have brought to the contrary, did ſo from Times beyond all Memory: And ſo it might have been in *England* too, for ought as I know; for though you have taken a great deal of Pains to Anſwer the Doctor's and my Arguments againſt the Tenants *in Capite* being the Repreſentatives of the whole Kingdom in Parliament, before the 49th of *Henry* III. and 18th of *Edward* I. and alſo to prove that the Words made uſe of in our Ancient Hiſtorians, Records, and Acts of Parliament, are of a more comprehenſive Signification than to be confined to them alone: But you have not as yet proved that theſe Gentlemen who you ſuppoſe to have had Places in our great Councils, beſides the Tenants *in Capite*, were Knights, Citizens, and Burgeſſes; or whether all the Lords of Manors, or great Freeholders in *England*, appeared there in Perſon for themſelves, and their Under-Tenants; therefore I pray be a little more clear in this Point, and ſhew me ſome Authorities that the Knights of Shires, Citizens and Burgeſſes, have been always conſtituent Members of Parliament ever ſince the Conqueſt: For methinks you waver in this Matter, and ſometimes you ſeem to aſſert the former, and ſometimes the latter.

F. I confeſs it is not my Humour to be poſitive in any Thing that is in the leaſt doubtful or obſcure; and therefore as I will not maintain that Knights of Shires were always a conſtituent Part of Parliament before your Conqueſt, or preſently after, tho' it is poſitively aſſerted by the Author of the *Modus tenendi Parliamentum*; ſince the Antiquity of that Piece is juſtly queſtioned by Mr. *Selden* and other Modern Antiquaries. So on the other Side, I ſhall not aſſert that they were not there from the beginning. But thus much I think I am able to prove, that they were Summoned to Parliament long before the 49th of *Henry* III. or 18th of *Edward*

ward I. But as for the Cities and Boroughs, that they had their Repreſentatives in Parliament, at or preſently after your Conqueſt, I think I can prove from as undeniable Teſtimonies as can be expected: Since all the moſt Ancient Rolls and Records of great Councils and Parliaments are long ſince loſt and deſtroyed.

Yet to ſhew you that we have ſome very ancient Authors that ſeem to mention not only the Citizens and Burgeſſes, but Knights of Shires to have been ſummoned before the Times you inſiſt upon; and if it prove ſo, whether they were there from the very Time of the Conqueſt is not material; ſince if I confute your, and your Doctor's Opinion of the 49th of *Henry* III. and 18th of *Edward* I. I carry the Cauſe, and you may then invent if you can ſome other Epocha whereon to fix their firſt appearing at our great Councils.

I ſhall therefore give you another Quotation out of the ſame old *Monk Sulcardus*, which immediately follows the Concluſion of the Charter of King *William* I. to the Abbey of *Weſtminſter*, but now cited: And it has been made uſe of not only by Mr. P. in his *Ancient Rights of the Commons*, &c. but by Sir *William Dugdale* himſelf, in his *Origines Juridicales*; as alſo by the Author of *Argumentum Antinormannicum*, to prove the Commons to have been ſummoned to a great Council, in the 9th Year of King *William* I. *Anno Dom.* 1075. The Words, as cited in Sir *William Dugdale*, are theſe, That after the King had Subſcribed his Name to this Charter, with the Sign of the Croſs; adding many of the Biſhops, Abbots, and Temporal Nobility, inſtead of *Cum multis aliis*, hath theſe Words, *Multis præterea illuſtriſſimis virorum perſonis, & Regni Principibus diverſi Ordinis omiſſis qui huic Confirmationi piiſſimo affectu teſtes & fautores fuerunt: Hij autem illo tempore à Regia poteſtate diverſis Provinciis; & urbibus ad univerſalem Synodum pro cauſis cujuſlibet Chriſtianæ Eccleſiæ audiendis, & tractandis ad præſcriptum celeberrimum Cœnobium quod Weſtmonaſterium dicitur Convocati.* Now I ſhall only obſerve from this Author, that Mr. *Selden* in his *Titles of Honour*, and Sir *Henry Spelman* in his *Gloſſary*, do always render *Provincia* for a County or Shire. *Pag.* 273. *Tit. Provincia.*

M. I pray give me leave to examine this Quotation, becauſe I confeſs it ſeems very ſpecious at firſt Sight; but if it be thoroughly examined, will make nothing at all for you. And to this End, pray let us read the Doctor's Obſervations on this Paſſage at the end of his Anſwer to *Argumentum Antinormannicum*. *B. A. A.* 301.

F. But you need not read from the beginning of that Paragraph, ſince I ſo far agree with the Doctor, as that by *Principes diverſi Ordinis*, are not to be underſtood (as this Author renders them, whom the Doctor here writes againſt) the Chief or Principal Men of ſeveral Ranks or Conditions; but the Chief and Principal Men of both Orders, *viz.* of the Clergy and Laity; yet will it not therefore follow (as the Doctor here would have it) that theſe *Principes diverſi Ordinis* were only Biſhops, Abbots, and great dignified Clergymen only; and the *Proceres* and *Magnates*, the Earls, Barons, and Temporal Nobility alone; for though I grant he produces ſeveral Quotations out of *Florence* of *Worceſter*, *Malmsbury* and *Eadmer*, to prove that *Principes Regni Eccleſiaſtici & Secularis Ordinis*, *Primates Regni utriuſque Ordinis*, &c. were at theſe Councils; yet I have already proved that the Words *Principes* and *Primates* do not in their proper Signification ſignify none but Biſhops, or dignified Clergymen, or the Temporal Nobility only; ſince theſe Words mean no more than Chief, Principal, or moſt conſiderable Men both of the Clergy and Laity, who had by reaſon of their Offices, Dignities or Eſtates, any Place in our General Councils at that Time; and which did certainly comprehend the Inferior Clergy alſo, though the Doctor has made bold to paſs them by, without any Notice taken of them; and if they were then there, by the ſame Rule the leſſer Nobility or Commons were alſo ſummoned from divers Provinces, Cities, and great Towns. *Ibid.* 301.

M. Well, but pray ſee here; does not the Doctor prove plain enough, that this Gentleman he writes againſt is miſtaken in his Tranſlation, by applying the Words *Provinciis, & Urbibus*, to Chief Laymen from divers Counties, Cities, and Boroughs; whereas the Doctor here proves that the Words mentioned in this Paſſage cannot here mean Laymen ſent from County to Cities, but only the Biſhops, whoſe Seats are here called *Urbes*, and which, as the Doctor ſhews us, were by a great Council held at *London* in the Year 1077, being the 11th of King *William*, tranſlated from Villages to Cities, as were *Sherburn* in *Dorſetſhire*, removed to *Sarum*; *Selſey* to *Chicheſter*, *Litchfield* to *Cheſter*, which was before this Council at *Weſtminſter* cited by *Sulcardus*, which this Author places in the 14th of this King. *Ibid.* p. 302.

And the Doctor here farther proves that these Words following, *pro causis cujuslibet Christianæ Ecclesiæ*; that this Universal Synod being called for hearing and handling the Causes of every Christian Church; that these Words, every Christian Church, must certainly mean many Churches in *England*, which in Reason and Probability could not be meant of the small Parish Churches all the Nation over; and therefore must be understood of Cathedrals or Churches where Bishops Seats then were, or where they had been, or were to be removed.

F. Pray give me leave to answer this Comment of your Doctor's, before we proceed farther. In the first Place, suppose I grant him that by *Urbes* may here be meant such Cities as had Bishops Seats, yet does it not therefore follow that it shall signify no other Cities or Towns but Bishops Seats only; for tho' I grant in the Modern Acceptation of this Word *Urbs*, here in *England*, a City and a Bishop's Seat are one and the same; yet it is plain, that at first it was not so; for then there had been no need of the Law you mention, whereby it was ordained that Bishops Sees should be removed from Villages to Cities; nor were all of them so removed at the Time of the holding this Council, which was held Two Years before the said Decree: Nay, the Doctor shews us from this very Place here cited, that some of them still remained in *Villis & Vicis*, in Villages and small Towns. And tho' the Doctor here supposes (I know not on what Grounds) "That the Persons "summoned by the King to this Synod, from Provinces and Cities, were such as "were concerned, or able to advise the King in this Matter, of the Conveniency "of the Places whither the Removals were to be made, as Deans, Archdeacons, "and other dignified Persons, and Church-Officers, as well of the Clergy as "Laity, *&c.*

In the next Place pray observe, that the Doctor owns that by these *Principes universi Ordines*, were meant the chief Clergymen and Nobility he there musters up; but passes by, or else did not consider the whole Context of these Words, *hij autem illo tempore diversis Provinciis & Urbibus ad universalem Synodum Convocati*; which must certainly refer to the *Principes Regni diversi Ordines*, to the chief and considerable Men both of the Clergy and Laity of the Kingdom, who were alike summoned from divers Countries and Cities, and great Towns, to this Synod. Now pray do you or your Doctor tell me (if you can) what Earls, Barons, or great Noblemen, were then summoned from Cities, or great Towns, as well as the Bishops and Deans of Cathedrals: Which if you cannot do, I see no Reason why we may not understand these *Principes Regni*, who were also summoned from the Countries and Cities, for the Representatives of the Commons of those Cities and Towns at that Time.

In the next Place, I think the Doctor is as much out in his Interpretation of the Word *pro causis cujuslibet Ecclesiæ*, for the Causes of every Cathedral Church; since it must certainly mean not only Cathedral Churches, but all other Churches, whether Parochial, or Conventual; for that it takes in the latter, appears by one great Cause of the summoning this Council, which was chiefly for the Confirmation of the Privileges of the Abbey of *Westminster*, which sure was no Cathedral Church, and yet must be some Church, or Ecclesiastical Corporation, or else this Synod could have had nothing to do with it: And I doubt not but this General Synod might, if it had pleased, have either made more Parish Churches, or united others where there were too many; and should it not then have been said to have met *pro causis cujuslibet Ecclesiæ*; for the Business of each Parish, as well as Cathedral Church? *Lastly*, The Doctor will have all these great Clergymen and Laymen only to meet at this Council, to advise the King about what farther Removals were to be made of Bishops Sees; as if thereupon he had had the sole Power of making Laws about them, without their Consent, or that of the Lay-Nobility, who tho' he will have to be always present in such Synods and Assemblies, yet does he not give them any Votes therein; whereas it appears by this Charter in *Sulcardus*, but now cited, that the Bishops, Abbots, Earls and Barons, whose Names are to it *consenserunt & signaverunt*; and it was *ab ipso Rege & supradictis Personis testificata, confirmata & auctorizata*; which if I understand *Latin*, signifies not only that they witnessed, but also assented to, authorized and confirmed it; which also appears more fully by the Conclusion of the Charter of King *Stephen*'s but now cited; all which the Doctor passes by as slily as a Commentator does those Words in a Text of Scripture that make against his Sense; for this had quite ruined and destroyed his fine Notion of the great Councils of the Kingdoms then wholly con-

consisting of a few Bishops, Abbots, dignified Clergymen, and great Noblemen, who had nothing else to do there but to look on, whilst the King alone made the Law.

To conclude; to shew you that this Assembly was not only an Ecclesiastical Synod, but Civil Council also, or Parliament as we now call it, I will give you Two good Testimonies for it, that we are not alone in this Opinion: The first is from Mr. *Somner*'s Glossary, *Parliamentum Synodus magna vocatur*; and to confirm this there is written in an old Hand in the Margin of this Manuscript of *Sulcardus* over against the Passage now cited, this Note; *Nota hic omnes convocari à Rege sua auctoritate ad causas Religionis tractandas tam nobiles de Clero, quàm Principes Regni cum aliis inferioris gradus quorum conventio videtur esse Parliamentum.*

M. Yet I suppose you cannot deny but that the Doctor has plainly proved from several Quotations from *Gervas* of *Canterbury*, *Richard* of *Hagulstad*, and the Continuator of *Florence*, that the Word *Provincia* in this Place signifies a Bishop's Diocese; and therefore that the *Principes Regni* who were summoned out of these Provinces or Dioceses, were only the Bishops, Abbots, and other great Clergymen. *Ibid. p.* 302.

F. I will not deny but that this Word *Provincia* does sometimes in our ancient Authors signify in an Ecclesiastical Sense the Diocese of a Bishop, as those Authors (the Doctor has here cited) shew us; yet that it must be taken in a more unlimited Signification in this Place, is also as certain; since besides that this Word *Provincia* does most commonly signify a Shire or County, (as I have already shewn) the very Context sufficiently proves it; since *Sulcardus* says expressly, that the chief Persons of both Orders were summoned from the Counties, or Provinces, as I already said; which when it refers to Lay-Men as well as to the Clergy, I hope you will not affirm that it can signify Dioceses only; but that besides the Bishops and Abbots, there were a great many more Persons present at this Council, both of the Clergy and Laity, the Doctor himself confesses. Let us therefore consult the Authors themselves which Dr. *Brady* has cited for the Sense of this Word *Provincia*, and let us see how fairly he has dealt with them. Now pray Sir observe, it is true, the same Words are almost repeated *verbatim* in every one of these Historians, *R. Hagulstad*, *Gervas* of *Canterbury*, and the Continuator of *Florence*, who all speak of a General Synod held at *Westminster Anno Dom* 1138. being the Third of King *Stephen*, in these Words, *Decima tertia die Decembris celebrata est Synodus apud* Westmonast. *cui præfuit Albericus Hostiensis Episcopus Domini Papæ Legatus, cum Episcopis diversarum Provinciarum numero XVII. Abbatibus fere XXX.* Here the Dr. concludes with an *&c.* Now see what lies hid under this *&c.*; in *R.* of *Hagulstad*, and the Continuator of *Florence*, it follows thus, *Cum Cleri & Populi multitudine numerosa*; in *Gervase* of *Canterbury* almost in the same Words, *Cum innumera Cleri & Populi multitudine.* Now pray tell me ingenuously what could be the Doctor's Meaning (who pretends to be so exact in all his Quotations) to leave out this so material a Passage in every one of these Authors, with this *&c.* unless it were that he was afraid his Readers should take notice how numerous this Council was, both of the Clergy and People; which if he had done, it would have quite overthrown and destroyed his Notion of Tenants *in Capite*, and let the World have known that this Council consisted of a far greater Number both of the Clergy and Laity, than 17 Bishops, and 30 Abbots. Now had such a Thing been done by Mr. *Petyt*, it would have "been branded by the Dr. with the hard Terms of taking away, or leaving unrecited such Words and Matters as he thought would either advance or destroy his "Assertions, as he (how justly, I leave it to you to judge) accuses Mr. *P.* in his "Title to his first Edition of his Answer to him". But *Ibid.*

Turpe est Doctori, cum culpa redarguit ipsum.

M. I cannot believe the Dr. had any sinister Meaning in leaving out this Passage, but did it either because (as I said but now) he supposed these Expressions as only Hyperbolical Phrases, by which these Monkish Writers used to express all the Ecclesiastical or Lay-members of those Councils; or else because he did not think it worth while, since he might not look upon this innumerable Company of Clergy and People here mentioned to have had any Share or Voice in this great Council, but only to have come thither as idle Spectators, as the Dr. shews us the *Populus* *B. A. A. p.* 30.

pulus did at the making of *Lanfranc* Archbiſhop of *Canterbury*; nor yet that they, or the Biſhops and Noblemen choſe him, but only all applauded the King's Choice. But that the Dr. was not afraid to take notice of the great Multitude of People that in thoſe hoſpitable Days were wont to flock to ſuch Aſſemblies, pray ſee what he ſays in his Series of *Engliſh* Great Councils, or Parliaments, at the End of his Introduction to *Engliſh* Hiſtory; where ſpeaking of the Election of
P. 54. Archbiſhop *Anſelm*, he recites this Paſſage out of an Epiſtle in *Eadmerus*, *Huic Electioni affuerunt Epiſcopi, Abbates & Principes Regni, & ingens Populi multitudo.* The ordinary People (ſays the Dr.) came to ſhout and make a Noiſe at ſuch Meetings, and only for good Victuals and Drink.

F. Very well; I think I ſhall eaſily anſwer your and the Dr's learned Obſervations. Firſt, as for the Monkiſh Hyperbolical Phraſes of *innumera* or *numeroſa Cleri, & Populi multitudo*: I confeſs, you might ſuppoſe there was ſomewhat in them, if they had been peculiar only to one or two of them; but when all theſe Writers do with one Conſent agree, in almoſt the ſame Words, to expreſs all the Members of ſuch Councils; I cannot ſee how they could have writ thus, unleſs they intended to be underſtood literally, that there were great Numbers both of Clergymen and Laicks, who appeared as Members of thoſe Aſſemblies, far more than the Dr's Tenants *in Capite*. And that they had alſo Votes therein, appears by that Paſſage in the Concluſion of King *Stephen*'s Charter, which I quoted but now out of *Sulcardus*; when ſpeaking of this very Council in the Third of King *Stephen*, which we laſt mentioned, that not only the *Comites, & Barones Regni*, but the *innumera multitudo Cleri & Populi*, were not only preſent, but *Religioſo favore voluntatem, & Aſſenſum Authoritati noſtræ paginæ, & Privilegio præbuerunt*, i. e. yielded their good Wills and Conſents to this Charter of Privileges to the Abbey of *Weſtminſter*. And to ſhew you farther that this infinite Multitude of Clergymen and Laics were alſo part of this Council, pray remember the Paſſage I but now cited out of *Florence*, of the Council held at *London*, *cum innumera Cleri & Populi multitudine*, who all alike gave their Conſents to the Conſtitutions, by *placet, placet, placet*; and conſider what the ſame *Sulcardus* has ſaid in the next Council of the Fourth of King *Stephen*; when after *Concilio adunato Cleri & Populi*, and a Recital of the Biſhops, he concludes with *Monachorum & Clericorum Plebiſque infinitæ multitudinis*, as all alike Members of it.

Now I ſhall leave it to your ſelf, or any ſober unprejudiced Perſon, to conſider, whether it is likely that ſo Grave and Auguſt a Thing as the Royal Charter of a Prince ſhould take notice of the frothy Conſent and Applauſe of the meer Rabble or Mob, (whether of the Clergy or Laity); or ſo judicious a Writer as this Author, and the reſt of the Hiſtorians (now cited) ſhould have nothing elſe to do, but to record to Poſterity for a very remarkable Tranſaction, That a great Multitude of the ordinary or vulgar Sort of People came to theſe Aſſemblies only to ſhout and make a noiſe, for good Victuals and Drink: And therefore the Dr. and you, I hope, will pardon me if I ſtill keep my former Opinion, that both the Archbiſhops *Lanfranc* and *Anſelm*, were not only named or propoſed by King *William* the Firſt and Second, in the Common or General Council of the Kingdom, but were alſo therein Elected or Choſen by the *Clerus* and *Populus*, according to the Manner of that Age, and the literal Meaning of thoſe Ancient Authors, whoſe Words the Dr. either leaves out, or ſtrives to wreſt to quite another Senſe.
B.A. 1. p. 300. Nor are his Objections againſt the Election of *Lanfranc* at all conſiderable. For as to the firſt Objection againſt the literal Senſe of the old Author, printed at the End of *Taylor*'s Gavelkind, "That he could not be elected *conſenſu totius Populi* "*Angliæ*, becauſe, who can believe that all the People of *England*, or the Hun- "dredth Part of them, ever knew or underſtood of *Lanfranc*'s being made Arch- "biſhop"? Now pray let me ask you this Queſtion; ſuppoſing this Election had been made in a General Synod of the Clergy alone, and the Words had been inſtead of *totius Populi, totius Cleri Angliæ*, would it not have been meer cavilling, to aſk how all the Clergy of *England* could leave their Livings, and come up to give their Conſents at this Election, or that the Hundredth Part of them ever knew of it? Since every Body is ſenſible thoſe Words are not be underſtood in a literal, but legal Senſe; that is, the whole Clergy are ſaid to give their Conſents to a Thing, when they do it by their lawful Repreſentatives, the Biſhops and Procurators of the Inferior Clergy? And why may not the whole People of *England* be as well ſaid to give their Conſents to this Election by their lawful Repreſenta-

tives at that Time? But that we are not ſingular in this Opinion, pray ſee what Archbiſhop *Parker* ſays in his *Antiquitates Britannicæ*, of this Election of *Lanfranc*'s, *Celeberrima eſt autem hujus, præ cæteris Electio,* &c. *Electus eſt enim à Majoribus* Cantuarienſis *Eccleſiæ, tum acceſſit Procerum, atque Præſulum, totiuſque quaſi Populi conſenſus in Aula Regis, quod ſanè eſt inſtar Senatus ſeu Parliamenti Anglicani.* As for the next Objection againſt this Election of *Lanfranc*'s, it is yet weaker than the former, becauſe the Dr. has anſwered this Queſtion himſelf, How the *Engliſh Saxon* Biſhops, Barons, and the whole People ſhould chuſe a Stranger, a Perſon they had never known, and poſtpone all their deſerving Countrymen? Now pray read a very good Solution to this Difficulty (if he may be believed) in his Anſwer to Mr. P. wherein he tells us, that King *William* had taken away from the *Engliſh* their Eſtates, and gave them to his *Normans*; and that this he did from his very firſt coming in; and then reckons up the Earldoms he gave to his *Norman* Followers. Now if the *Engliſh* had then no Eſtates, they could ſure have no Places or Votes in that great Council when *Lanfranc* was choſen. But if to ſolve this you will ſay as the Dr. does in his Anſwer to *Antinormannicum*, that this Council was held about the Fourth Year of the Conqueror, ſome Years before he had made an abſolute Conqueſt, and that the *Engliſh* Biſhops, and Barons, and Freemen had ſtill ſome Eſtates left, and therefore might then make the major Part of this great Council, when *Lanfranc* was made Biſhop, who would never have elected him had it been left to their Choice: Pray tell me if the bare Fear of refuſing be a ſufficient Objection that he was not elected, whether or no it will not be as ſtrong an Objection againſt his being elected by the Senior Monks of the Church of *Canterbury*, as *Gervaſe* expreſly tells us he was, "Becauſe (ſays the Dr.) they did it by "Order and Direction from K. *William*; and their Proceeding being no other than it "is now by the Chapters of other Churches upon the *Conge d' Eſlire*, they could "not refuſe him". And now ſuppoſing his Power to have been as great in the Common Council of the Kingdom, as in the Chapter of *Canterbury*, why may we not ſay almoſt in the ſame Words, They could not, they durſt not refuſe him (who was already elected by the Prior and Chapter of *Canterbury*) for fear of loſing their Eſtates. But if an Election that cannot be refuſed, is none at all, the Dr. may do well to conſider whether there was then, or is now, any Canonical Elections of Biſhops in *England* at this Day.

P. 14, 15.

P. 300.

Gervaſ. Dorob. in Act. Pontif. Cant. Col. 1653. *Gloſſary.* p. 36, 37.

M. I ſhall not farther diſpute this Matter at this Time; therefore pray go on to the reſt of your Authorities out of our *Engliſh* Hiſtorians, proving that any Knights, Citizens and Burgeſſes appeared in Parliament before the Times we allow them to have been there.

F. Tho' I think I have ſufficiently proved at our laſt Meeting, from the Charters of King *John*, and *Henry* III. as alſo from the Words *Communitas* and *le Commune*, that the Common Council of the Kingdom conſiſted of many more Members than your Tenants *in Capite*; yet to let you ſee that the Hiſtorians and Annaliſts of thoſe Times did comprehend all the ſeveral Orders under the general Titles of *Clerus* and *Populus*, or *Magnates* and *Proceres*, you may ſee in the Chronicles of *Thomas Wikes*, *Anno Dom.* 1237. Where it is only ſaid in general, that the *Clerus* and *Populus Regni* did in that Year (being the Ninth of *Henry* III.) grant the King a 30th of all their Moveables for the Confirmation of *Magna Charta*; and which is more remarkable, the Parliament which was held in the Year 1264. being 49th of this King, (and in which you grant the Commons were preſent) is only thus briefly mentioned by this Author, in an Hiſtorical way, *tranſacto ſiquidem viceſimo die Nativitatis Dominicæ facta eſt* London. *per Comitem* (ſcil. Leyceſtriæ) *Convocatio non minima Procerum Anglicorum*, &c. Where in the Annals of *Waverly* in this Year, it is only ſaid, *Factum eſt Parliamentum magnum* Londoniæ, *&c.* Now pray obſerve, that either the Commons are mentioned by *Wikes* under the Name of *Proceres*, or not at all; and that under the Word *Parliamentum* the Commons were then comprehended, appears by the Agreement between the King and the Barons there extant, which is ſaid to be made, *de unanimi aſſenſu, & voluntate noſtra* (*ſcil. Regis*) Edwardi *Filij noſtri Prælatorum, Comitum, & Baronum, & Communitatis dicti Regni noſtri*: Now it muſt be granted, ſince it appears by the Writs of Summons of 49th *Henry* III. that the Commons were there, and conſequently muſt be comprehended under this Phraſe of *Communitatis Regni*; and if this had been the firſt Time they had been ſummoned, 'tis ſtrange none of theſe Authors ſhould

Annal. Waverly, p. 217.

take any notice of ſo remarkable an Alteration and Change of the *conſtituent* Parts of our *Engliſh* Parliaments.

But that the Knights, Citizens and Burgeſſes were alſo ſummoned in the next Year, in a Parliament of the 50th of this King, you may ſee in the ſaid *Wikes*'s Chronicle, *Anno Dom.* 1265. where he ſets down all the *conſtituent* Eſtates of Parliament, which were ſummoned to meet at *Weſtminſter*, at the Tranſlation of St. *Edward*'s Reliques, in theſe Words, *Convocatis univerſis Angliæ Prælatis & Magnatibus nec non cunctarum Regni ſui Civitatum pariter, & Burgorum potentioribus ut Tranſlationis Solemnia Celebrius illuſtrarent*; where the Knights of Shires are comprehended under *Magnates*, and the Citizens and Burgeſſes are here ſtiled *Potentiores Civitatum & Burgorum.* And that this was not only for a meer Ceremony, but for Parliament Buſineſs alſo, ſee the next Page, where he tells us, *Celebrata tandem tantæ tranſlationis ſolemnitate cæperunt Nobiles* (i. e. all the Eſtates abovementioned) *ut aſſolent, Parliamentationis genere de Regis & Regni negotiis pertractare*, &c. And in which Parliament the King ſo far prevailed as to obtain a 20th Part of all the moveable Goods of the Laity. And yet the Continuator of *Mat. Paris* in the Affairs of this Year takes no Notice of this Parliament, but only ſays in general, that St. *Edward*'s Body was this Year tranſlated into its new Shrine. And the Annals of *Waverly* under this Year make mention of this Parliament in general Terms thus, *Facta Convocatione Epiſcoporum, Comitum, Baronum, Abbatum, Priorum, & multorum aliorum.* So uncertain a Thing it is wholly to depend upon the general Expreſſions of Monkiſh Writers, without comparing them and the Records together, and conſidering the Subject Matter about which they treat. Nor can we ſuppoſe, that the *conſtituent* Parts of our Parliament were chopt and changed as often as they did their Phraſes and ways of expreſſing the Parts of them. For they not foreſeeing the Differences that might ariſe about theſe Matters, had no Reaſon particularly to recite the *Conſtituent* Members or Eſtates of Parliament, as often as they had occaſion to mention them, it being very well known who they were at that Time. But to prove further, that it was not likely there was any Alteration in the *Conſtituent* Parts of the Parliament, from what it was in the 49th, may appear by this Writ ſtill extant among the Patent Rolls of the 54th of this King; where it is expreſly recited, That it not ſeeming ſafe to the *Prælatis, Magnatibus, &* Communitati *Regni noſtri*, that Himſelf and his Son Prince *Edward* ſhould be both out of the Kingdom at once in the Holy Land; and that therefore he gives the whole Subſidy of a 20th, granted him by the whole Kingdom, to his ſaid Son. And that it continued ſo in the beginning of *Edward* I. Reign, appears by a Proteſtation in the 4th of this King; as it is found in the Patent Rolls, wherein he recites a 15th to have been granted him of all Moveables, by the *Comites, Barones, ac alij Magnates, &* Communitas *Regni noſtri.* So that unleſs the Senſe of theſe Words *Communitas Regni* muſt alter every Year, there is no Reaſon for us to believe any Change to have been in the *Conſtituent* Parts of Parliament ſince the 49th of *Henry* III. This I think may be ſufficient to ſhew you that before the Time you mention, not only the Knights of Shires, but the Citizens and Burgeſſes did appear in Parliament both before your 49th of *Henry* III, and 18th of *Edward* I.

P. 88.

Rot. Pat. 54. *H.* 3. m. 7.

M. Perhaps indeed ſince that the Commons might be comprehended under the general Words *Magnates & Proceres* by *Wikes*'s Chronicle in the 49th of *Henry* III. or elſe not be mentioned at all, which I rather incline to believe; that the other Paſſages out of the ſame Author concerning the Citizens and Burgeſſes being ſummoned either to a great Council or Parliament in the Reign of *Henry* III. is more than I before ever took notice of. Yet this Author does not tell us, whether it was to the one or the other, nor how many of them were there; whether one only, or more, for each City and Borough-Town; or whether they were elected by the People, or nominated by the King to appear there: But as for the Words *Communitas Regni* mentioned in the Agreement of the 49th of *Henry* III. tho' it might ſignify the Body of the Commons in that Record, yet if they were not again ſummoned to Parliament, till the 18th of *Edward* I. it ſignified only the Body of the leſſer Tenants *in Capite*, till after the 18th of that King.

F. I am ſorry to ſee Prepoſſeſſion and Prejudice has ſo much over-run you as to hinder you from cloſing with the Truth; for pray tell me, if this Author laſt mentioned could in the 49th of *Henry* III. (when the Commons were ſummoned without Diſpute) comprehend all the Eſtates of that Parliament under the general Words

Words of *Proceres* and *Magnates*; and the Knights of Shires are underſtood by the ſame Word in the next Paſſage cited out of the ſame Writer; why may not others do ſo too in other Parliaments? As for your next Exception, it is a very ſmall Cavil; for it appears that this Summons of the Citizens and Burgeſſes at the Tranſlation of King *Edward*'s Relicks, was to a Parliament, by the Words that follow, *Nobiles ut aſſolent Parliamentationis genere de Regis, & Regni negotiis pertractare:* And why theſe Citizens and Burgeſſes ſhould not be as well elected by their reſpective Cities and Boroughs this Year as well as in the laſt, as it appears they were by that Writ to the Cinque Ports, which the Dr. and Mr. *Pryn* has given us; I deſire you would give me any ſatisfactory Argument to the contrary. As for your Objection againſt the Words *Communitas Regni* being to be underſtood for the Body of the Commons in 54th of *Henry* III. it is altogether as unreaſonable, ſince this is to make the *Conſtituent* Parts of the Parliament alter, not only when Writers ſhift their Phraſes, but when they do not; and that without any other Reaſon, but becauſe the Writ of Summons and Parliament Rolls of thoſe Times are all periſh'd. And to deny the Commons were there, only for that Reaſon, is altogether as unjuſt as for any Court of Juſtice to turn a Man out of the actual and long Poſſeſſion of an Eſtate, meerly becauſe his Writings and Evidences by the Careleſneſs and Roguery of his Servants have happen'd a great many of them to be loſt or burnt.

B. A. P. p. 140. *Pryn's Parliament Regiſter.*

But fully to convince you (if poſſible) that Dr. *Brady's* Opinion of the Commons not being again ſummoned from the 49th of *Henry* III. till the 18th of *Edward* I. is a meer Fancy of his own, and contrary to the expreſs Authorities both of Hiſtorians and Records; and to come to plainer Proofs; pray in the firſt Place take notice, that it appears by a Writ of the 11th of King *Edward* I. to the Archbiſhop of *Canterbury*, acquainting him with the Rebellion of *Lewellyn* Prince of *Wales*, that he had *de Concilio Prælatorum, Procerum & Magnatum Regni, nec non totius Communitatis ejuſdem*, reſolved (God willing) to put an end to this *Welſh* Rebellion: So that this War ſeems to have been reſolved upon at the Parliament held the Year before, and now mentioned in this Record; a War which that valiant and fortunate Prince effectually concluded by the total Subduing of *Wales*, and the killing of *Lewellyn*, whoſe Head was cut off and ſent to *London*; the Particulars of which War *Knighton*, as well as other Hiſtorians relate at large; and alſo that preſently after, *David*, the Brother of this *Lewellyn*, the Cauſe of all theſe Miſchiefs, was (as this Author ſhews us) *in Magno Parliamento* at *Shrewsbury*, condemned, and afterwards hang'd, drawn and quarter'd.

Rot. Walliæ. m. 4. n. 2. *dorſo.*

Col. 2463.

Walſingham is more ſhort in the Relation of this Parliament; only ſays, that in the 11th of *Edward* I. *Habitum eſt Parliamentum* at *Shrewsbury*, in which this *David* was condemned and executed as before. But *Thomas Wikes*, who lived at this very Time, in his Chronicle but now cited, will better inſtruct us than either *Walſingham* or *Knighton*; and his Account of this Parliament is as follows.

Walſing. Hiſt. Ang. fol. 51. *Chron.* Thom. Wikes, *f.* 111.

Anno 1289. *Circa Feſtum Sti.* Michaelis *Rex convocari fecit apud* Salopesberiam *Majores Regni ſui & Sapientiores tam de Civibus, quam de Magnatibus & fecit illuc adduci* David, *qui apud Rothelan fuerat captivatus ut ſuper exigentiam Delicti ſui corpore ſubiret Judicium*, &c. And then relates at large the Manner of his Execution. From which Paſſage we may obſerve, that this Author makes it plain who were the *Communitas Regni* mentioned in the Record of the 11th of this King, and who conſtituted this great Parliament at *Shrewsbury*, viz. *Majores & Magnates Regni*, which laſt, as I have often proved, takes in the Knights of Shires, and the wiſeſt of the Citizens.

M. But yet this Author ſays no more, but that the *Majores Regni & Sapientiores tam de Civibus, quam de Magnatibus*, were called to this Parliament wherein *Lewellyn* was condemned: Now it doth not appear that theſe *Cives* were elected, or that there were any Burgeſſes choſen for the Boroughs, or that there were any Knights choſen by the Counties; there were indeed *Magnates* called to this Parliament, but they might be all Tenants *in Capite*.

F. Well then, ſince you will not be ſatisfied without direct and evident Proof, ſuch as neither your ſelf nor Dr. *B.* can deny; pray take this which Mr. *Petyt* has not long ſince communicated to me; and which he has lately diſcovered in *Rotulo Walliæ*, in a By-Roll not taken notice of by any body as I know of before. It is a formal Writ of 11th of *Edward* I. for ſummoning the Temporal Lords to be with that King at a Colloquy, (or Parliament) *apud* Salop *in Craſtino*

Rot. Walliæ, 11 *E.* 1. m. 2. *dor.*

ſtino Sti. Michaelis; and there is in the ſame Roll a ſecond Writ directed to ſeveral Cities and Boroughs for electing Two Citizens, and two Burgeſſes to this Parliament with a void Space to inſert more Names. And alſo a Third Writ is there directed to the Sheriff of every County in *England* to cauſe to be choſen Two Knights, *pro Communitate ejuſdem Comitatus.* And laſtly, there is a Fourth Writ directed to the Juſtices and other of the King's learned Council, with the ſame Preambles to each of them, all being commanded to appear at the ſame Time and Place. Now what can Dr. *Brady* ſay to this? That he was ſo long Keeper of theſe Records, and ſure ought to have peruſed them, (as he did many others of the ſame Reign,) yet has either wilfully or careleſly paſſed by this ſo memorable a Record. And ſo I hope this will convince you for the future of the Danger of being over-poſitive in an Opinion, becauſe it could not preſently be confuted; and let you ſee that it is not at all improbable, but that the like Writs of Summons would appear as well before the 49th of *Henry* III. as in the reſt of the Years of his own and his Son's Reign, had not thoſe Records been loſt and deſtroy'd: Which conſidered, we have Reaſon to thank God for thoſe that the Iniquity of the Times have yet left us.

Id. Ibid.

M. I muſt confeſs you have told me more than ever I yet thought could be produced againſt the Dr.'s Opinion; and I ſhould be throughly convinced, could you ſhew me any Writs of Expences for the Knights, Citizens, and Burgeſſes, who appeared at this Parliament.

F. I hope you will not aver againſt an expreſs Record, tho' the Writs of Expences for that Year are loſt (being never entred upon the Roll) by the Omiſſion of the Clerks, who as Mr. *Pryn* acknowledges, oftentimes neglected the Entries of Writs of Summons themſelves, as well as of Expences. But if this were any material Objection, then there ſhould have been no Commons ſummoned to any Parliament from the 49th of *Henry* III. to the 28th of *Edward* I.; when the firſt Writs of Expences (except thoſe of the 49th of *Henry* III.) do firſt appear upon the Rolls; and ſo you muſt then go from the Doctor's new Notion of the Commons being again ſummoned in the 18th of this King. But to ſhew you that theſe Expences for the Knights, Citizens and Burgeſſes could be no new Things, Pray peruſe the Clauſe in this Second Writ *de expenſis Militum & Burgenſium*, of the 28th of *Edward* I. we have upon the Rolls: The Writ is to the Sheriff of *Somerſetſhire* to pay to the Knights of that County, *Venientibus ibidem nobiſcum de diverſis negotiis nos, & Populum Regni noſtri ſpecialiter tangentibus rationabiles expenſas ſuas in veniendo ad nos ibidem, morando, & inde ad propria redeando* (and now obſerve what follows) *prout alias in Caſu Conſimili fieri conſuerit.* Now pray tell me, how this laſt Clauſe could ever be true, if the Knights of Shires, Citizens and Burgeſſes, had never been ſummoned to Parliament ſince the 49th of *Henry* III. which was but 32 Years; or the 18th of this King, but 10 Years before this Writ was publiſhed all over the Kingdom.

Vid. 4th Part of Parliament Regiſter, p. 12.

Rot. Clauſ. 28. E. 1. m. 13. dorſo.

M. I confeſs what you now ſay, ſeems to carry ſome Weight with it; but yet in my Opinion falls far ſhort of a Preſcription; ſince a Thing might be ſaid to be done as in like Caſes was accuſtomed, tho' it had never been practiſed above 20 or 30 Times.

F. I ſee neither you nor your Dr. by Reaſon of your different Employments, had ever any true Knowledge of the Nature of Tenures and Preſcription according to the Laws of *England*; which he is not to be blamed for, had he not taken upon him to be ſo great a Maſter in both: Therefore to ſet you right for the future; you muſt know, the Knights, Citizens and Burgeſſes have ever claimed being ſummoned to all Parliaments by Preſcription, as I ſhall prove by and by; but as for that Part of it called Cuſtom, my Lord *Coke* tells us in his Notes upon *Littleton*, "That in every Cuſtom there be Two Eſſential Parts, Time and Uſage, "Time out of Mind, and continual Peaceable Uſage without lawful Interruption". Now the Commons have in all Times beyond the Memory of Man, challenged to have enjoyed both theſe eſſential Parts of Common Law or general Cuſtom. So that theſe Words, *Prout Caſu Conſimili conſuevit*, muſt be by Implication of Law extended beyond the Times of *Henry* III. and *Edward* I.

P. 106.

And for Proof of this, I ſhall ſhew you what Claims the Commons have made to this Uſage from Time immemorial. Therefore I ſhall begin with Mr. P's firſt Argument in his Rights of the Commons aſſerted, where the Burgeſſes of St. *Albans* in their Petition to King *Edward* II. in Parliament, *Anno Regni* 8, ſet forth, that they

P. 7.

Sicut

Sicut cæteri Burgenſes Regni ad Parliamentum Regis (when it ſhould happen to be ſummoned) *Per duos comburgenſes ſuos venire debeant, prout totis retroactis temporibus venire conſueverunt, tam tempore Domini* Edwardi, *nuper Regis* Angliæ *patris Regis, & Progenitorum ſuorum*, as in the Time of *Edward* II. *Semper ante inſtans Parliamentum*, &c.; and farther declare that the Names of ſuch Burgeſſes coming to Parliament were always enrolled in the Rolls of the Chancery; notwithſtanding all which, the Sheriff of *Hertford*, at the Procuration, and in Favour of the Abbot of St. *Albans* and his Council, refuſed *Burgenſes prædictos præmunire ſeu nomina eorum retornare prout ad ipſum pertinuit*, &c. and therefore they pray Remedy. The King and Council's Anſwer whereunto was thus, *Scrutentur Rotuli, &c. de Cancellaria ſi temporibus Progenitorum Regis Burgenſis prædicti ſolebant Venire vel non? & tunc fiat eis ſuper hoc Juſtitia vocatis evocandis ſi neceſſe fuerit.* Where by the Words *totis retroactis temporibus, &c.* muſt be underſtood that they and their Predeceſſors were always accuſtomed to ſend two Burgeſſes to Parliament in all former Ages, not only in the Time of *Edward* I. but his Progenitors; therefore in King *John*'s Time, his Grandfather, at leaſt, and ſo long before the 49th of *Hen.* III. *Rot. Pat.* 8. E. 2. n. 23. *Pro Burgenſibus de St.* Albano.

M. I confeſs the Gentlemen of your Party make a great deal of Noiſe with this Quotation, but if it be ſtrictly lookt into, I believe it will prove of no ſuch great Conſequence as you would make it. For Mr. *P.* hath concealed the main Cauſe of theſe Burgeſſes pretending a Right of ſending Members to Parliaments; and therefore 'twill not be amiſs to give you the reſt of it at large.

Ad Petitionem Burgenſium villæ de Sancto Albano *ſuggerentium Regi quod licet ipſi tenent villam prædictam de Rege in Capite & ipſi ſicut cæteri Burgenſes Regni ad Parliamenta Regis cum ea ſummoniri contigerit per duos Comburgenſes ſuos venire debeant prout totis retroactis temporibus venire conſueverunt pro omnibus ſervitiis Regi faciendis*, &c. By which Words, as the Dr. very well ſhews us, it is evident, that the Burgeſſes of St. *Albans* claim'd not, nor preſcribed to come to Parliaments as meerly from a Borough, but as from a Town that held in chief of the King; and this Service was incident to their Tenure, and was ſuch as the King's Progenitors had accepted in lieu of all Services due by reaſon thereof. *B. A. P.* p. 38.

And farther, the Anſwer to this Petition is remarkable, which amounts to no more than this, That if it did appear by the Rolls of *Chancery*, that the Burgeſſes of St. *Albans* were wont to come to Parliaments in the Time of the King's Progenitors, *then ſuch as have been called (i. e.* to Parliament) ſhould be called when there was neceſſity for it. Hence 'tis clear the King and his Council were equally Judges when it was neceſſary to call them, and for them to come; as they were of their Rights and Pretences to come.

F. I very much wonder a Gentleman of your Underſtanding ſhould be ſo much impoſed upon by ſuch weak Inferences: For in the firſt Place it is a great Miſtake in Matter of Fact, that theſe Burgeſſes of St. *Albans* claimed to come to Parliament no otherwiſe but as Tenants *in Capite*; for tho' the ſaid Petition recites, that they held the ſaid Town of the King *in Capite*, yet they do not likewiſe ſay, that they claim'd to appear there only by that Tenure, for then they ſhould have recited that they *ſicut cæteri Burgenſes Tenentes in Capite*, and not *ſicut cæteri Burgenſes Regni ad Parliamenti Regis venire debeant.* And tho' it is true they ſet forth, that they appeared there for all Services, yet do they not ſay, that their Tenure *in Capite* was the only Cauſe of their Appearance in Parliament; ſince divers Towns and Boroughs of the Kingdom, which held not *in Capite* at all, had the like Privileges before; of which I can give you divers Inſtances, which I ſhall read to you out of this Note, which a Learned Friend of mine, ſince deceaſed, hath taken out of the Rolls in the *Tower*, tho' when he ſent it me, he through Haſte or Inadvertency, hath forgot to ſet down the number of the Roll to moſt of ſuch Boroughs who never held *in Capite*, and yet have always ſent Burgeſſes to Parliament by Preſcription; as firſt, The Borough of *Arundel*, which always held of the Earls, and never of the King, being granted by *Henry* I. to *Hugh Montgomery* Earl of *Arundel*. Secondly, The City of *Bath* appears to hold of the Biſhop of *Bath* and *Wells*. Thirdly, The City of *Wells* it ſelf, which always held of the Biſhop, and never of the King, and is therefore called *Villa Epiſcopi* in all publick Writings belonging to that Church, and was made a Free Borough in the Third of King *John*. Fourthly, *Beverly* was made a free Borough by *Thurſton* Archbiſhop of *York*, which was confirmed by King *Henry* III. Fifthly, *Bodmin*, which always held of the Earls of *Cornwall*. Sixthly, *Bridgwater*; for *Par.* 52. *H.* 3. 15 m. 18.

King

Chart. Antiq. 2. *Joh. M.* 13. King *John* granted it to *William Brewer*, *Quod Brugwater, ſit liber Burgus.* Seventhly, *Coventry*, which was always held of the Earls of *Cheſter*, and pleaded in the Reign of *Edward* I. to have never been taxed with the King's Demeſnes, but with the Body of the County. Eighthly, *Biſhops-Linne*, for King *John* granted to *John* Biſhop of *Norwich*, *Quod Burgus de Lenna ſit Liber Burgus in perpetuum:* All which by the Writs we have left us, ſent Burgeſſes to Parliament as early as any that held *in Capite*. Theſe I give you only for a Taſte; but I doubt not, but, if I had Time, I could give you Three Times as many, eſpecially in *Cornwall*, where the Boroughs did almoſt all hold of the Earl of *Cornwall*, and not of the King. But beſides the Doctor's Error in ſuppoſing that no ancient Cities or Boroughs had any Right of ſending Members to Parliament, but only as they held of the King *in Capite*, his Miſtake is yet much more groſs in his conſtruing thoſe remarkable Words in the King's Anſwer to the Burgeſſes of St. *Albans*, *Et tunc fiat eis ſuper hoc Juſtitia, evocatis evocandis ſi neceſſe fuerit*, thus, "*And* "*then let them have Juſtice in this Matter; and ſuch as have been called, may be* "*called, if there be Neceſſity.* Upon which Words you have alſo from the Doctor put this pleaſant Gloſs: "*Hence 'tis clear the King and his Council were* "*equally Judges when it was neceſſary to call them, and for them to come; as they* "*were of their Rights and Pretences to come.* But I muſt needs tell you, I think nothing can be more abſurd, and contrary to the genuine Senſe of this Record, than the Doctor's Conſtruction, who will needs have the Words *evocatis evocandis*, only to mean a Calling, or Summoning to Parliament, which is quite contrary to the true Senſe of the King's Anſwer to this Petition; for if that had been his Meaning, that thoſe only ſhould be Summoned to Parliament whom the King pleaſed to call, to what Purpoſe were theſe Words, *ſcrutentur Rotuli*, &c. *de Cancell. ſi temporibus Progenitorum Regis Burgenſes prædicti ſolebant venire vel non?* For if their coming to Parliament had been a Matter of meer Grace and Favour, and not of Right, and ſo wholly left in the King's Breaſt whether they ſhould come or not; it was in vain for him to command the Rolls of *Chancery* to be ſearched, whether any Burgeſſes us'd to come to Parliament or not, in the Times of his Progenitors. Or if it had not been a Matter of Right, why ſhould it be here ſaid, that upon ſearch of the Rolls, *Tunc fiat Juſtitia*, Let Juſtice be done, if there never was ſuch a Right of Preſcription by which they claimed? But I much wonder that the Doctor (ſo great a Critick in Records) ſhould ever conſtrue them *evocatis evocandis*, a ſummoning or calling to Parliament; and I deſire you would ſhew me in what Parliament Roll, or Ancient Record you can find *evocare ad Parliamentum*, to ſummon to Parliament: But I more admire that you, who are a profeſs'd Civilian, ſhould no better underſtand the Senſe of your own Terms; whereas if you would have but conſulted any Civil Law Dictionary, you might have found *evocare Teſtes* always ſignifies to ſummon Witneſſes; and I can ſhew you by Twenty Precedents both from our Common Law Records, as well as your Canon Law Forms, that *evocatis evocandis*, does always ſignify the Summoning ſuch Witneſſes as are to be ſummon'd in a Cauſe; and in this Senſe it is to be underſtood in this Record, that not only the Rolls ſhould be ſearch'd, but alſo Witneſſes ſummon'd to prove their Claim, if any Diſpute or Doubt ſhould ariſe about the Matter of Fact.

Cart. Anno 6. *Joh.*

M. I ſhall no longer contend with you about the genuine Senſe of theſe laſt Words, ſince perhaps you may be in the right; but yet for all that, it does not appear, that the King and his Council did by this Anſwer allow this Petition of the Town of St. *Albans* to be true, That they had ſent Burgeſſes to Parliament in the Time of his Predeceſſors; much leſs that any other City or Borough in *England* were then allowed ſuch a Right by Preſcription.

F. I grant indeed that this Petition doth not abſolutely allow the Matter of Fact (as it concerns the Diſpute between them and the Abbot) to be true, as it is there ſet forth; neither yet does it condemn it for falſe. But whether it were true, or falſe, it matters not; for both the Petition and the Anſwer do ſufficiently prove the Point for which we make uſe of it; (*viz.*) that it was then received for a general Cuſtom, or Law, Time out of Mind, That the Cities and Boroughs had ſent Members to Parliament according as in the Petition is ſet forth; otherwiſe it can ſcarce be ſuppoſed (much leſs believed) that the Burgeſſes of St. *Albans*, or the Penman of this Petition, ſhould dare to tell the King, and his Learned Council, in the Face of the Parliament, ſo ridiculous a Novelty, to be recorded to Poſterity, as that they and their Predeceſſors in the Time of King *Edward* I. and his Progenitors,

P. R. C. p. 10.

nitors, had ſent two Burgeſſes to every Parliament, or that the King and his Council ſhould have ever received this Petition without Indignation, and a ſevere Rebuke for their Impudence; if all the World then knew, (as certainly they muſt, were it true) that there was never any Election of Burgeſſes to Parliament before the 49th of *Henry* III. (which was but Fifty Years before the 8th of *Edward* II.) from thence had appeared no more till the 18th of *Edward* I. which was but 24 Years before the Delivery of this Petition, a Time which muſt have been then freſh in the Memories of moſt of the King's Council there preſent: Whereas they allow this general Claim of Preſcription. And every Perſon, (tho' but meanly skill'd in our Law) does underſtand a general Preſcription, *viz. à tempore cujus contrarium memoria hominum non exiſtit*, what it was then, and ſo remains, by the Law of *England* at this Day, as appears by our Ancient Records, Law-Books, and Judicial Proceedings.

And ſurely the Burgeſſes of St. *Albans* did not ground their Petition of Right upon bare Affirmation, but the Juſtice and Certainty of their Claim, as they very well knew, wherefore ſo they prayed it might be examined by uncontroulable Proofs, the Rolls of *Chancery*. And the King, Chancellor, and all the Council, did no leſs know there were ſuch Entries on the Rolls, and therefore order'd their Search. Whereas if the very Ground of their Petition had been notoriouſly falſe and idle (as it muſt have been, if neither this, nor any other Borough had ſent Burgeſſes to Parliament before the 49th of *Henry* III.) then inſtead of recording this Petition and Anſwer, to future Ages, they would with Contempt and Indignation have rejected it; nor would the Abbot of St. *Alban*'s Council, and the Sheriff of *Hertford*, againſt whom this Petition was exhibited, have been wanting in their own Defence to have ſhewed that this Ancient Preſcription, not only of this, but of all other Boroughs, was a meer Chimera and Fable. But inſtead of this, we do not find they made any Oppoſition againſt it, becauſe they knew they had been ſummoned and appeared at divers Parliaments before that Time; as you may ſee in *Prin*'s Parliamentary Regiſter they were in the 28th of *Edward* I. which is almoſt as early as we have any Writs of Summons left us to the Commons of this King's Reign. And tho' it is true, the Sheriff of *Hertford* in this 28th Year, returns that the Bailiffs had made no Return of the Precept ſent them; yet this plainly proves that they were then look'd upon as a Borough, and that it was very well known that it was wont to ſend Burgeſſes to Parliament, or elſe it had been a vain thing for him to have ſent them any ſuch Precept at all. And tho' it is alſo true, there are no more Returns from St. *Albans* left us till the 35th of *Edward* I. yet that is no good Argument againſt their Appearance in the former Years; ſince the Writs and Returns upon them being in looſe bits of Parchment, might very well be loſt, as well as they are for many other Places. But that the Burgeſſes of St. *Albans* were ſummoned, and appeared in Parliament in the 35th of *Edward* I. appears (tho' the Returns be loſt) by the Writs of Expences of this Year (being the firſt we have left us in *Prin*'s Parliamentary Regiſter) for the Cities and Boroughs; in which Liſt, the Burgeſſes of St. *Albans* are firſt upon the Roll. And that they were in Parliament before this Time, may further appear by that Clauſe at the end of the Writ which I have already taken notice of, *viz.* That they were to have their Expences for coming, ſtaying, and returning, *prout in caſu conſimili fieri conſuevit*; which words relate to Ancient Cuſtom, and extend to St. *Albans*, as well as to any other Borough there mentioned. And that they alſo were ſummoned and appeared in *primo & ſecundo* of *Edward* II. (in whoſe Reign this Petition was exhibited,) you may ſee in *Prin*'s Parliamentary Regiſters, both Third and Fourth Parts; in the laſt of which you may find the Names of the Burgeſſes return'd in the Firſt and Fifth of this King; as they might have been ſeen alſo in the Second, had not the Return (as Mr. *Prin* then acknowledges) been torn off; tho' it is plain that they appeared there; and ſo may be likewiſe loſt for all the reſt of the Years of this King, till the Second of *Edward* III. when we find they appeared again, and ſo continue to ſend Burgeſſes to this Day. And if it be a good Argument of their Non-appearance from the defect of Records, I'll undertake to prove that *London* and ſeveral other Cities did not ſend any Citizens to Parliament in ſeveral Kings Reigns, as you may ſee in this Liſt of Towns (whoſe Writs of Expences we now mentioned) of the 35th of King *Edward* I. where *London*, and moſt other great Cities are omitted, and yet St. *Albans* is in. To conclude, it is certain, that this was no new Claim of this Borough; as appears by a

Ibid. p. 11.

Parl. 3. p. 202.

Parl. 4 p. 36. B. 7.

P. 200. p. 900.

Vid. Breve 5. Ed. 2. *in Bundello.* a Writ of the 5th of *Edward* II. to the Sheriff of *Hertford*, that the Bailiffs of the Abbot having refuſed to levy the Expences for *Ralph* and *Peter Picot*, who had ſerved as Burgeſſes for the ſaid Town in the laſt Parliament; whereupon the ſaid *Ralph* and *Peter* ſet forth before the King, that the ſaid Town uſed not to be taxed with other Boroughs of the ſaid County for the Expences of Knights, *totis temporibus retroactis*; but that it is a Free Borough, and uſed to be ſummoned to Parliaments, which have been ſummoned by the King and his Progenitors *temporibus retroactis*; and that the Burgeſſes of the ſaid Town uſed to receive their Expences as the Burgeſſes of other Boroughs of the Kingdom. To which Plea and Petition of the ſaid Burgeſſes, when the King had appointed a Day both to the ſaid Burgeſſes and Bailiffs of the Abbot, to appear before him in Chancery, they failing at the Day appointed, the King therefore iſſued out this Writ to the Sheriff of *Hertford* to ſummon the ſaid Abbot and Bailiffs to appear again before him, to ſhew Cauſe why the ſaid *Ralph* and *Peter* ſhould not receive their Expences as aforeſaid.

M. I will conſider further of this Argument; for I muſt ingenuouſly confeſs I never heard or underſtood ſo much of this Matter before: But pray proceed to the reſt of your Authorities.

F. But that it was not only the Opinion of the Borough of St. *Albans*, and admitted by the King and his Council, but that alſo that it was the Belief of ſucceeding Parliaments, that the Commons were part of the great Council of the Kingdom long before the 49th of *Henry* III. for Proof of which, I deſire you to call to mind that King *John* in the 14th of his Reign made himſelf and Crown tributary to the Pope.

P. R. C. p. 24. *Vid.* Mat. Paris *Anno* 1213.

Rot. Parl. 40. *Ed.* 3. n. 7, 8. But *Anno* 40 *Edward* III. when the Pope demanded the Arrears of this Tribute from the King; the Prelates, Dukes, Counts, Barons and Commons, upon their full Deliberation in Parliament, reſolved with one Accord, that neither the King, nor any other could put the Realm, nor People thereof into ſuch Subjection, *ſanz aſſent de eux*, without their Aſſent, *viz.* as well of the Commons as of the Lords; and that it appeared by many Evidences, that if he had ſo done, it was done *ſanz lour aſſent*, and contrary to his Coronation Oath, *&c.* Now what can be more plain, than that above Three Hundred Years ago there was not the leaſt Diſpute that the Commons of *England*, (of which the Citizens and Burgeſſes were then undoubtedly a Part) ought to have been preſent in the *Commune Concilium Regni*, or Parliament of King *John*'s Reign, and to have aſſented to that King's Reſignation, to make it legal and valid, as well as the Prelates, Earls, and Barons.

B. A. P. p. 70. *M.* As for this Argument, I need trouble my ſelf no farther than to give you the Dr's Anſwer in his own Words, *viz.* " All that the Reſolution of this Parliament " in this Caſe proves, is, that King *John* could not ſubject himſelf, his Realm or " People, without their Aſſent; but proves not who they were that in ſuch Caſes " at that Time gave or denied their Aſſent, or how they did it; or whether 153 " Years before this Reſolution, the Commons were repreſented by Knights, Citizens, " and Burgeſſes as at this Day. The Prelates and Barons gave their Anſwer firſt, " that ſuch a Subjection could not be made without their Aſſent, and then the " Commons were aſked what their Thoughts were, and they anſwered in the ſame " Manner, and in the ſame Words the Barons had done, and when they anſwer all " together, they do it in the ſame Form of Speech, conceived firſt by the Barons, " without any Conſideration whether the Commons were the ſame Body of Men, " at the Time of executing the Charter of King *John*'s Subjection, *&c.* as at that " preſent, or no.

F. I muſt tell you, I am not at all ſatisfied with this Reply of the Dr's. For if there is no heed to be taken of the Houſe of Commons Anſwer to the Pope, given in ſo ſolemn a Manner as this was, there is no Credit to be given to any Thing they could ſay, if they are once ſuppos'd to ſpeak like Parrots by rote, and only as they were taught by the Lords, without any Conſideration of the Truth or Falſhood of what they averred. And tho' the firſt Propoſal of this Matter was by the King to the Lords, yet the Pope then threatning to excommunicate the King, and put the whole Realm under an Interdict; it was certainly the Intereſt as well of the Commons as the Lords, to avoid the Blow by a wary and true Anſwer to the Pope's Demands. For had their Anſwer been ſo idle and frivolous, as you would make it, it would have been Advantage enough for the Pope to have returned in Anſwer to this Letter, (had what the Dr. alledges been true) that the upſtart Houſe of Commons had nothing to do to meddle or treat of any ſuch Matter,

ſince

ſince they were none of the Parties to the Agreement, nor one of the Eſtates, at that Time when King *John* reſigned his Crown, and made himſelf and Kingdom tributary to his Holineſs's Predeceſſors. Nor was the Space of an Hundred Fifty Three Years, from the Time of King *John*, to the 40th of *Edward* III. ſo far beyond the Memory of Man, as that ſo memorable a Tranſaction could not be well known to the Pope, as well as to the Houſe of Commons then in being; ſince the making them a Third Eſtate, fell out but in the Time of their Grandfathers; ſo that it is ſcarce poſſible that the Memory of ſo remarkable a Tranſaction, of which the whole World then rang, ſhould be loſt in Two or Three Generations.

But I ſhall now proceed to ſhew you, that as it was the expreſs Judgment both of the Lords and Commons, that King *John* could not make the Kingdom Tributary to the Pope without their Conſents in Parliament; ſo was it the Judgment alſo of the whole Houſe of Commons in the Second of *Henry* V. and admitted by that Noble Prince and the Houſe of Lords, that they ever had been a Member of Parliament, and that no Statute or Law could be made without their Aſſent; as appears by a Petition or Proteſtation preſented by the ſaid Commons to the King in Parliament, a Copy of which I ſhall now read to you, as far as it concerns the Matter in Queſtion; "Our Soveraign Lord, your humble and trewe Lieges, "that ben come from the *Comune* of your Lond, byſechin unto your riht twiſsneſs, "that ſoo as it hath ever be thair Libertie and Freedom, that their ſhould noo Sta- "tute, noo Law be made, of leſs than they yaf thereunto their Aſſent, conſide- "ring that the *Comune* of your Lond, the which that is, and ever hath be a Mem- "ber of your Parlement, been as well Aſſentirs as Petitioners, that fro this Time "forward by Compleint of the *Comune* of eny Miſchief, asking Remedy by Mouth "of their Speaker for the Commons, outher elſe by Petition written, that there "never be no Law made thereupon and ingroſed as Statute and Law, neither by Ad- "ditions, neither by Diminutions by no manner of Term, ne Terms, the which "that ſhould change the Sentence and the Intent asked by the Speakers Mouth, "or the Petitions by foreſaid yeven up in Wryteing by the foreſaid without Aſſent "of the foreſaid *Comune*, &c. This Petition is ſo plain that it needs no Comment, therefore pray tell me what you think of it.

P. R. C. p. 39. *Rot. Parl.* 2. *H.* 5. P's. 2. n. 22,

M. In the firſt Place give me leave to tell you, that I do not find at all by the King's Anſwer to this Petition, that the King allowed the Matter of Fact therein ſet forth to be true, but rather the contrary, as you may ſee by the Anſwer it ſelf in theſe Words; The King of his Grace eſpecial granteth, that fro hensforth nothing be enacted to the Petitions of his *Comune* that be contrary of their asking, whereby they ſhould be bound without their Aſſent, ſaving alway to our Leige, (*i. e.* Royal Lord) his *Real* Prerogatyf to grant, and deny, what him luſt of their Petitions, and Askings aforeſaid.

And I ſhall farther give you the Dr's Anſwer to this Argument, which is to this Effect; "The Deſign of this Petition was not to ſet forth the Antiquity of "their Exiſtence, but their Right, that nothing might be enacted without their "Aſſent contrary to their Intent and Liking; and to ſhew you it was never done "ſince the Commons were a Third Eſtate, or (as they ſay) a Member of Parlia- "ment, therefore 'tis needleſs to prove that which no body denies, that the Aſ- "ſent of the Commons was then and is now required to the making of all Statutes "and Laws. But pray give me leave to ask you (with the Dr.) What, were the "Commons of *England* as now repreſented by Knights, Citizens and Burgeſſes, "ever an eſſential *conſtituent* Part of the Parliament from Eternity, before Man "was created? Or have they been ſo ever ſince *Adam*? Or ever ſince *England* was "Peopled? Or ever ſince the *Britans*, *Romans*, and *Saxons* inhabited this Iſland? "Certainly there was a Time when they began to be ſo repreſented. And that this "is the Queſtion between us, concerning which, whether you or my ſelf be in the "Right, I durſt leave to any impartial Judge.

B. A. P. p. 86.

F. But notwithſtanding your Dr.'s Anſwer, I think the King and Lords did here allow the Subſtance of this Petition or Claim, as the main Ground and Foundation on which it was built, *viz.* That the Commons had *ever been Members of Parliament*; and therefore that no Law, or Statute ſhould be made without their Aſſents (which Encroachment upon their Liberties, it ſeems had been before endeavoured by the King and Lords;) and therefore let me tell you, that the Anſwer of the King in Parliament, is rather a full Conceſſion of the Truth of the Commons Claim; otherwiſe it is not to be imagined that the King and Lords would have left ſuch

a Claim as of ancient Right, without any Denial or Proteſtation againſt it. But inſtead of this, the King and Lords allow the whole to be true; only the King reſerved to himſelf his Negative Voice of granting or denying what he pleaſed; which the Commons themſelves do alſo allow him in the Concluſion to the Petition it ſelf, as you may ſee, if you pleaſe to read it at large. And farther, that this Affirmation of the Commons was no other than a Renovation, or Memorial of the ancient Law of the Land, in that Point, is more fully explained and confirmed by a Peti-

P. R. C. p. 41. *Ryley's Placit. Parl.* p. 619. *Pet. Parl.* 18. E. 2. n. 2.

"tion to King *Edward* II. in Parliament, of all the Biſhops, Prelates, Counts, "Barons, and others of the Commonalty, in the 18th of his Reign, about an 100 "Years before this of the 9th of *Henry* V. ſetting forth, That they held their Ma-"nors of the King *in Capite*, as well within the Foreſts as without; to which "Manors they held *Gaſz* (i. e. *Waſt*) Appendant, and of which the Seignories "had been rented out by the Acre, half Acre, and Rood, in improving their ſaid "Manors, and that thereupon the Officers of the King had made Seizure thereof, "becauſe they had not the King's Licenſe ſo to do; and therefore pray they may "improve their ſaid Manors, *&c*". To which Petition it was anſwered by the King and his learned Council in Parliament, That this could not be done without a new Law; to do which the *Commonalty* of the Land will never Aſſent; and concludes, *Infra coram Rege*. From whence I make theſe Obſervations, That the King and his Council do hereby declare it, (as the ancient Cuſtom of *England*,) that no new Law could then be without the Aſſent of the Commons or Commonalty of the Land; and alſo, that this Commonalty was a diſtinct Body from the Commonalty of the Tenants *in Capite* before-mentioned, who were the Perſons that put up this Petition.

Rot. Parl. 18. Ed. 3. m. 56.

And beſides this, I can ſhew you divers Precedents to the ſame Purpoſe; and particularly a Declaration or Proteſtation to *Edward* III. by the Commons in Parliament, that they would not be obliged to any Statutes or Ordinances, without the Aſſent of them the ſaid Commons. Which is alſo farther confirmed by another Petition of Right, or a Proteſtation of the Commons to King *Richard* II. as it is to be found in the Parliament Rolls of the 6th of *Richard* II. (Pt. 1. *m.* 52.) wherein they pray againſt a pretended Statute made by the King and the Lords, againſt thoſe who in the Statute of *Henry* IV. are called *Lollards*; in which they ſet forth, that the ſaid Statute was never aſſented to by the Commons; and therefore pray that it may be annulled. And pray obſerve the Reaſon, for it was not their Intent to be juſtified, nor to oblige themſelves, or their Succeſſors, to the Prelates, more than their Anceſtors have been in Times paſt.

From all which we may obſerve, that the Commons do by all theſe Petitions and Proteſtations, make as ſtrong a Claim by Preſcription for themſelves and their Anceſtors not being bound by the Acts of the Biſhops and Lords, as the King could make for himſelf and his Anceſtors, touching his own Prerogative by Preſcription. But as for your Queries on this Petition, ſince they are not your own, give me leave to tell you, I look upon them as impertinent: For who ever ſuppos'd that the Commons claim'd a Right by Preſcription ever ſince the Creation, or ever ſince the firſt Peopling of this Iſland? Since any Body may ſee, that this Word *ever* is to be underſtood according to the Nature of the Subject in hand, *viz.* from the firſt Inſtitution of the *Saxon* Government in this Iſland. Now pray give me leave to put you a Caſe; Suppoſe you ſhould affirm, that the Crown of *England* hath ever been ſucceſſive, and not elective; would it not be meer cavilling, to ask you, whether it was ſo, *jure Divino*, ever ſince *Adam*? But as you will leave it to any impartial Judge, who is in the Right, you or I, ſo ſhall I likewiſe leave it to them to conſider, which is moſt likely, That your ſelf, your Dr. and ſome of our Modern Antiquaries, ſhould make the Houſe of Commons no ancienter than about the latter End of *Henry* III. or middle of *Edward* I.'s Reign; or the conſtant Judgment of both Houſes of Parliament, with the Aſſent of the King, and his learned Council, who have inſiſted upon the Conſent of the Commons, as their ancient and undoubted Right, beyond all Time of Memory.

M. I muſt confeſs you have proved it plain enough, that it was the conſtant Opinion of more than one Parliament, that the Commons have been before the 49th of *Henry* III. Members of the great Council of the Nation; but how long before that, they do not ſet forth. But ſince Parliaments are no more infallible than general Councils, I hope you will pardon me if I do not give abſolute Credit to their Teſtimony; ſince in an illiterate Age, as that was in which the Com-

mons

mons make this Petition, it might happen that not only they but the King himſelf, and his Council at that Time, might not certainly know, how long and how little a Time the Commons had been ſummoned to Parliament. Therefore ſince all the Writs of Summons to them before the 49th of *Henry* III. are loſt, I pray ſhew me from this general Right of Preſcription you ſo much talk of, that there muſt have been Commons ſummoned to Parliament before that Time; for I have now ſomewhat very material out of Mr. *Pryn*'s Parliamentary Regiſter, to object againſt Mr. *Lambard*'s Argument from the Plea of the Tenants in ancient Demeſne being exempted by Preſcription, from paying to the Wages of Knights of the Shires; (as you told me at our laſt Meeting but one.) But firſt let me hear the reſt of your Arguments from this Preſcription of Knights, Citizens and Burgeſſes appearing in Parliament, before the 49th of *Henry* III. For ſince you have now proved they were there by an undeniable Record in the 11th of *Edward* I. I ſhall now confine my ſelf to Sir *Henry Spelman*'s and Sir *William Dugdale*'s (as well as the Dr.'s firſt) Term of the 49th of *Henry* III.

F. I ſhall obſerve your Deſires, and in performing of which, I ſhall purſue this Method; I ſhall firſt give you a general Definition of Preſcription, and ſhall then prove, that the Knights, Citizens and Burgeſſes, have always claimed to appear in Parliament by vertue of this general Right of Preſcription. Now the Terms of the Law tell us, "That Preſcription is, when a Man claimeth any Thing "for that he and his Anceſtors and Predeceſſors, whoſe Eſtates he holds, had, or "uſed any Thing in all Times whereof no Memory is to the contrary": Now pray let us ſee to what Time this is limited, that ſhall be ſaid to be within Memory, and what was anciently counted beyond time of Memory in a Preſcription: Which may be beſt learnt from a Petition of the Commons to King *Edward* III. in the 43d of his Reign, which is to be found in the Parliament Roll of that Year; wherein among other Petitions of the Commons, this is one, which I ſhall render and abridge out of *French*. "Item, becauſe the whole Time of King "*Richard* I. is held for *temps de Memorie*, that it would pleaſe the King farther "to limit this Time; ſo that it do not paſs the Coronation of King *Edward*, "Grandfather to the King that now is. But mark the King's Anſwer to this Petition, "Let the Law continue as hath been hitherto uſed, until it be otherwiſe "ordain'd". So that ſince there has been no Alteration in this Point from the Reign of *Edward* III. then the Time beyond Memory, or whereof there is no Memory to the contrary, continues ſtill beyond the Time of *Richard* I.; for *Littleton* tells us, that all the Time of *Richard* I. is Time of Memory; and therefore Sir *Edward Cooke* in his Comment upon him, ſays, "That this was intended "from the firſt Year of his Reign, for (from that Time) being indefinitely, doth "take in all the whole Time of his Reign, which is to be obſerved.

Rot. Parl. 43. *E.* 3. n. 16.

Lib. 2. *Sect.* 170. p. 115.

Having fixt a certain Time of a general Preſcription beyond Memory, I ſhall now proceed to ſhew you, that the Claim of the Commons appearing at the Common Council or Parliament of the Kingdom is beyond that Time. Which ſince I cannot do directly, (by Reaſon of the Loſs of the Records of Parliament of thoſe Times) any farther than has been already in the Caſe of the Burgeſſes of St. *Albans* (which alone is, I think, ſufficient to ſatisfy any reaſonable Man) we muſt therefore make uſe of ſuch Collateral Proofs and Records, which tho' they do not directly, yet by undeniable Conſequence will prove the Point in Queſtion. I ſhall therefore in the firſt Place make uſe of a Writ in the Exchequer of the 34th of *Edward* I. directed to the Barons thereof, reciting, "That whereas the Men of *Co*"*ventry* ſet forth in their Petition to the King, that the ſaid Town is not a City, Bo"rough, nor Demeſne of the King's, ſo that the Townſmen were not wont to be tax"ed as Citizens, and Burgeſſes, or Tenants in ancient Demeſne, in any Taxes granted "to the King, and his Progenitors, but only with the Community of the ſaid "County of *Warwick*; and yet that the Taxers and Collectors of the ſaid County "have endeavoured to levy a 30th of their Goods (towards an Aid granted by "the Communities of the Cities and Boroughs to the King) to their Damage "and Impoveriſhment; and therefore pray remedy: The King therefore orders, "that the Rolls be ſearch'd concerning ſuch Taxations in the ſaid Town; and if "it evidently appear by them, that it is as they ſet forth, and that the ſaid Men "were always taxed with others without the Towns, Boroughs and Manors afore"ſaid, in all Payments of this Sort; that then they ſhould not permit the ſaid Tax"ers and Collectors to diſtrain the ſaid Inhabitants to pay the King by reaſon of the

Inter Communia in ſcaccario penes Rememorat.

" ſaid Conceſſion of a 30th, otherwiſe, *quam in totis temporibus retroactis in hujuſ-*
" *cemodi caſu fieri conſueverit*, &c". From which Record we may draw theſe Concluſions, Firſt, That this Town of *Coventry* did not hold of the King, and yet was a Borough, and as ſuch ſent Members to Parliament in the 26th, 28th, and 30th of *Edward* I. as appears by the Return of Writs of that Year. Secondly, That yet it preſcribed, *totis temporibus retroactis*, in all Times paſt, to be taxed with the Body of the County, and not with the Communities of the Cities and Boroughs, in all Taxes granted to the King and his Progenitors; which plainly ſhews, that the Cities and Boroughs granted Taxes by themſelves in the Times of his Progenitors, that is, in the Time of King *John* at the leaſt. Laſtly, That the King orders the Rolls to be ſearched; which had been idle Direction, had it then been known or believed, that the Cities and Boroughs never gave any Taxes for themſelves in Parliament before the 49th of *Henry* III. but little above Forty Years before the Date of this Writ.

Vid. Pryn's *Parliam. Regiſt.* Part 2d. p. 40, 55.

I ſhall ſhew you a like Writ (which is to be found in the ſame Place) for the Towns-men and Tenants of *Beverly* in the County of *York*, in the 8th of *Edward* II. ſetting forth in their Petition, that they had been taxed to the 20th lately given to the King *per Communitates Comitatuum*, (i. e. the Commons of the Counties) by the Taxers and Collectors of a Subſidy of the 20th in the ſaid County; altho' they and their Anceſtors had been accuſtomed to be taxed to all Aids, as well to the King, as to his Progeniors, granted *per Communitates Comitatuum ejuſdem Regni*, with the Community of the County, and not with the *Communitates Civitatum & Burgorum*; yet that the Taxers and Collectors of the 15th, lately granted by the Commons of the Cities and Boroughs, do grievouſly diſtrain them, to their great Damage, and therefore pray remedy. Whereupon the King commands that the Rolls be ſearch'd of ſuch like Taxations; and if it appear that the ſaid Town has been always hitherto taxed, as they in their Petition ſet forth, that then they ſhall be diſcharged from the ſaid 15th.

Vid. Pryn's *Parliam Regiſt.* Part 2. p. 46.

From which Record we may conclude, that this Town of *Beverly*, tho' an ancient Borough, (and as ſuch was ſummoned to ſend Burgeſſes to Parliament in the 26th of this King) yet did not hold of the King *in Capite*, nor in ancient Demeſne. Secondly, That Aids had been given the King and his Progenitors *per Communitates Comitatuum*, *i. e.* by the Commons of the Counties; which could not be done but by their lawful Repreſentatives, and that in Parliament. But how far theſe Progenitors muſt extend, I need not repeat to you; the Ground of which Petition being admitted by the King in Parliament.

M. Theſe Authorities tho' material, yet do not in my Opinion reach the Point you were to prove, *viz.* That the Knights, Citizens and Burgeſſes appeared in Parliament before the Reign of *Richard* I. for both theſe Authorities, (tho' admitted for good) yet reached no higher than King *John*'s Time, which is within Memory, as your ſelf have now ſet forth, ſince the Word *Progenitors* need not be extended any farther than the Time of that King, who was great Grandfather to *Edward* the Firſt and Second, to whom theſe Petitions were made by theſe Towns-men, and ſo do not clearly amount to your full Time of Preſcription, *viz.* before the Reign of *Richard* I.

F. Well, if you grant this, you have loſt your Cauſe, ſince certainly the Reign of King *John* is long before the 49th of *Henry* III. but ſince you will be ſo overcritical, I will ſhew you ſome Claims by Preſcription beyond all Time of Memory, made by the Tenants in ancient Demeſne, from being taxed to contribute to the Wages of Knights of Shires; and if they thus preſcribed, it is plain there muſt have been Knights of Shires choſen, againſt paying whoſe Wages they preſcribed to have had this Privilege. Now this Preſcription muſt be very ancient, ſince as Mr. *Lambard* ſhews us in the Place I have quoted, there has been no new Tenants in ancient Demeſne, ſince the Time of *William* I. But pray ſee the Writ it ſelf in the old Regiſter of Writs, (which by the Bye is there put down only as a Form for drawing all other Writs of this kind, there to be found, for other Towns, and particularly the Tenants of *Odiham* in *Hampſhire*, whenever there was occaſion;) and therefore it is not to be wonder'd that neither the Name of the King, nor of the Place be expreſſed in Words at length. The Writ it ſelf is not very long, therefore I ſhall give it you in *Latin* as far as is material: *Rex Vicecomiti L. ſalutem monſtraverunt nobis homines, & Tenentes de Manerio de F. quod eſt de Antiquo Dominico Coronæ* Angliæ *ut dicitur quod licet ipſi & eorum Anteceſſores Tenentes de*

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eodem

eodem Manerie a tempore quo non extat memoria ſemper hactenus quieti eſſe conſueverunt de expenſis Militum ad Parliamenta noſtra & Progenitorum noſtrorum Regum Angliæ *pro Communitate dicti Comitatus venientium, &c.* and then proceeds, "That "whereas the Sheriff diſtrains the ſaid Tenants to contribute to the Expences of "the Knights that came to the laſt Parliament, to their great Damage, otherwiſe "than *totis retroactis temporibus fieri conſuevit*; therefore commands him that he "deſiſt from his ſaid Diſtreſs, and do not compel the ſaid Tenants to contribute "otherwiſe *quam omnibus temporibus retroactis.* And now tho' this Writ be without any King's Name or Date, yet it appears at the Bottom it was iſſued by *G. L. Eſerope* then Chancellor, and *William de Herlſton*, Clerk of the Chancery; and this muſt have been before the 15th of that King, becauſe it appears by the Cloſe Rolls of that Year, that in *December* the Great Seal was delivered to *William d' Ayremyn*, under the Seals of *William de Clyffe*, and the ſaid *William de Herlſton*, Clerks of Chancery; who are often mentioned in our Records to have been Keepers of it *pro tempore*, till the Second of *Edward* III. when the ſaid *William de Herlſton* had the ſole Cuſtody thereof committed to him.

Rot. Clauſ. 15. *E.* 2. *m.* 37. *dorſo in Sceduła.*

Rot. Clauſ. 2. *Ed.* 3. *m.* 33. *dorſo.*

But there is yet a perfecter Writ of this kind in the 50th of *Edward* III. extant in the Rolls directed to *John de Cobham*, and Four other Knights therein named, reciting that whereas *Simon* Archbiſhop of *Canterbury* claims as well for himſelf as his Predeceſſors, and their Tenants, hitherto *à tempore quo non extat memoria*, for certain Lands held in *Gavel-kind* in the County of *Kent*, which ought to be free from the Expences of Knights coming to our Parliaments, as well as thoſe of our Progenitors; and concludes with a *Superſedeas* to the ſaid Sheriff not to moleſt the ſaid Tenants, until ſuch Time as the King be further informed, and that He by the Advice of his Council has ordained what is to be done in the Premiſſes. From both which Writs we may draw theſe Concluſions; Firſt, That there was at the Time of the granting theſe Writs, a Claim by Preſcription, Time out of Mind, allowed for all Tenants holding of the Archbiſhop in *Gavel-kind*, to be exempted from contributing to the Wages of Knights of the Shire; or elſe theſe Petitions, and the Writs upon them, had been idle and ridiculous.

Clauſ. 50. *E.* 3. *p.* 2. *m.* 19. *dorſo.*

Laſtly, That this Claim of being thus exempted Time out of Mind (which as I have already proved, extends beyond the Time of *Richard* I.) is allowed by the King himſelf for good in both theſe Writs; only in the laſt the King will be informed whether they are Tenants in *Gavel-kind* or not. So that the Concluſion muſt be, That if theſe Tenants in Ancient Demeſne, and *Gavel-kind*, were always exempted from paying to the Wages of Knights of the Shire beyond Memory, *i. e.* by Preſcription, then certainly thoſe Knights muſt have been choſen Time beyond Memory. I could give you ſeveral other Writs of like Nature, but I will not overcharge you. Now certainly if the Knights of Shires were thus elected Time beyond Memory, the Citizens and Burgeſſes muſt have been ſo too, ſince in *Scotland* where there were for a long Time no Commiſſioners for the Shires yet the Cities and Boroughs ever ſent Delegates to Parliament, as your Dr. himſelf allows.

M. I muſt beg your Pardon if I cannot come over to your Opinion, concerning this Preſcription of Knights of Shires, Citizens and Burgeſſes appearing in Parliament before the 49th of *Henry* III. ſince Mr. *Pryn* in his Second and Third Part of his Parliamentary Regiſter has proved, 1. That all the Words you inſiſt upon to prove this Preſcription, are to be underſtood in another Senſe than what you will now put upon them; ſo that tho' Mr. *Lambard* and others of great Note lay the Original Title and Right of all our Counties, ancient Cities and Boroughs electing and ſending of Burgeſſes to Parliament, to be by Preſcription Time out of Mind, long before the Conqueſt; yet againſt this Opinion Mr. *Pryn* argues thus (whoſe Arguments I ſhall contract, becauſe it would be tedious to recite them all *verbatim*.) That as for the Wages of Knights of Shires (which is the Principal Thing you inſiſt on in this Argument) the ancienteſt Writ extant for their Wages, are thoſe of 28th and 29th of *Edward* I. and no Records or Law-Books I have ſeen, derive their Title higher than the Reign of *Edward* I. The firſt Statute concerning them is that of the 12th of *Richard* II. which only enacts, that the levying Expences of Knights ſhall be as hath been uſed of old Time.

Vid. Obſervations on Writs of Summons. Part 2. p. 173. Part 3. Sect. 8. *per totum.*

Part 2. p. 175.

Cap. 12.

The next Statute of the 11th of *Henry* IV. enacts that Knights of Shires unduly returned, ſhall loſe their Wages of the Parliament of old Time accuſtomed, not at, or before the Conqueſt accuſtomed: Yea no Man can prove there were any Knights for

Cap. 1.

Counties elected, and ſent to Parliaments by the King's Writs, before the 49th of *Henry* III. not to the Reign of the Conqueror, or before the Conqueſt, as Mr. *Lambard* would ſtrain it. Now as for the Words *Anteceſſores & Progenitores* in the Writs you have cited, the former may very well ſignify the Anceſtors of thoſe Inhabitants of Boroughs or Towns, and the latter the Predeceſſors of the King that then was, which in the Time of *Edward* II, and *Edward* III, when thoſe Writs were granted, need extend no higher than the 49th of *Henry* III.; and as for thoſe other Words in theſe Writs, as *totis temporibus retroactis*, and *a tempore quo non extat memoria*, they muſt have the like Interpretation, or what is equivalent to it, *viz.* in all Times paſſed, or Time out of Mind; *i. e.* before there were any Knights elected for the Counties, they were always free from contributing to their Wages; ſo that this Preſcription need not extend higher than the 49th of *Henry* III. abovementioned; ſince which Time it is true (as they there ſet forth) that they and their Anceſtors in all Times, or Time beyond Memory, have always uſed to be quit from ſuch Expences of Knights: Now there were many Preſcriptions and Cuſtoms in uſe in *Edward* IIId's Time, and ſince, which may be well ſaid to be Time out of Mind, yet certainly had their Original not before, but long ſince the Conqueſt, as you may read in *Brooks*, *Fitzherbert*, and other Law-Books, Title Cuſtom, and Preſcription; and *Cooke*'s firſt Inſtit. My Lord *Hubbard* in his Reports; *That which hath been uſed, or preſcribed in but Two or Three Ages only, or out of the Memory or Mind of Men then being, is reputed a Legal Cuſtom, or Preſcription*, 34 Hen. VI. Brook's *Tit. Preſcription*. Therefore this Preſcription of Tenants in ancient Demeſne to be exempted from contributing to Knights Wages, will no ways warrant Mr. *Lambard*'s Concluſion from it; *Ergo*, there were Elections of Knights of Shires before the Conqueſt. I am certain that at this Day Tenants in ancient Demeſne can plead, that both they and their Anceſtors, Time out of Mind, never were accuſtomed to pay Exciſe for any thing for which Exciſe is now paid; will it not therefore follow, *ergo*, all other Places now ſubject to pay Exciſe, were liable to it before the Conqueſt, when it is a Duty impoſed but ſince the late Wars? So that Mr. *Pryn* here proves, that your and Mr. *Lambard*'s Argument from the Tenants in ancient Demeſne, and *Gavel-kind*, not paying in all Times paſt, or Time beyond Memory, to the Wages of Knights of the Shires, is altogether fallacious, and inconcluſive.

Fol. 58. 113.

P. 117, 118, 198, 199.

F. Pray Sir give me leave to reply to your Anſwer before you proceed to ſpeak of Boroughs. Firſt let me tell you, Mr *Pryn* very much forgot himſelf when he here ſays, that the firſt Writs for Wages of Knights of Shires are but of the 28th or 29th of *Edward* I. ſince you know better; for your Doctor has printed the Writs of Expences for the Knights of Shires that ſerved in this Parliament of the 49th of *Henry* III. and you your ſelf have urged it to me, that this was the firſt Time that theſe Knights had their Expences allowed them, becauſe there was no Clauſe of *prout in Caſu ſimili*, expreſſed therein; which I told you might only be through Inadvertency of the Clerks; ſince the Doctor there gives us another Writ of the 42d of that King, whereby it appears that the Four Knights of Counties who had appeared before the King and his Council at the foregoing Parliament, were ordered their Expences, for going, returning, and ſtaying at the ſaid Parliament: Which ſhews that theſe Writs were no new Things; and if ſo be theſe Knights had their Expences allowed them only for their Attendance at a Parliament, it is much more reaſonable and likely they had their Expences allowed when they made a Part of it.

B. A. P. 141.

But to put this out of all doubt, Mr. *Pryn* himſelf has cleared this Point, not only by printing this very Writ in the 4th Part of his Parliamentary Regiſter, but by declaring in the very firſt Section of that Volume, that tho' after this Writ no more are to be found of this Sort extant upon the Rolls of *Henry* III. till the 28th of *Edward* I. yet they were conſtantly iſſued out at the End of every Parliament held after the 49th of *Henry* III. till the 28th of *Edward* I. (being 35 Years Space) as this Clauſe in the Writs of the 28th, 29th and 33d of *Edward* I. *prout alias in Caſu conſimili fieri conſuevit*, aſſures us. But all the Bundles of Writs from the 49th of *Henry* III. till the 29th of *Edward* I. being loſt; and no Writs of Summons from the 49th of *Henry* III. entred in the Clauſe Rolls till the 22d of *Edward* I. tho' returnable into Chancery, no wonder that theſe Writs *de Expenſis* (then not returnable at all) were

no

not enrolled till the 28th of *Edward* I. after which they were uſually endorſed on the Clauſe-Roll till the Second of *Henry* V. So that by Mr. *Pryn*'s own Confeſſion, the Loſs of the Writs from the 49th of *Henry* III. till the 28th of *Edward* I. is no Argument at all to prove that there were no ſuch Writs before the 49th of *Henry* III. unleſs you could prove to me, that the Writs and Records of all thoſe Parliaments had been ſo well preſerved, that there are none loſt or embezled, which Mr. *Pryn* acknowledges to the contrary; for if they were loſt after the 49th of *Henry* III. pray give me a Reaſon why the like Writs of Summons and Expences, might not be loſt as well before that Time.

Having, I think, ſufficiently anſwered Mr. *Pryn*'s Argument from the not finding any Writs of Expences before the 28th of *Edward* I. from what he himſelf ſaid afterwards upon better Conſideration; I ſhall now proceed to reply to that other Part of his Argument, from the equivocal Uſe of the Words, *old Times accuſtomed*, and in *a tempore quo non extat memoria*; which he will have to ſignify a Space of Time only beyond the Memory of any Man living: Whereas the Words Cuſtom and Accuſtomed, when uſed of any general Cuſtom or Uſage all over the Realm, is ſtill to be taken in much larger Acceptation, as all our Law-Books will teach you. But I ſhall not dwell upon this, but ſhew you that thoſe Authors, whoſe Works you have read, had no true Notion of this Expreſſion in our ancient Records and Pleadings; *viz. a tempore cujus contrarij memoria non exiſtit*; which has been always underſtood (as *Littleton* here tells you) for a Time beyond the Reign of King *Richard* I. So that wherever you find theſe Words, *totis temporibus retroactis*, or *de Temps dont memorie des Homs ne curge al contrarie*, in any Records, they are always to be underſtood of a Time older than that now mention'd. You may prove a contrary Uſage, but before that Time no Deed can be given in Evidence, nor Cuſtom alledged beyond it: And that this is not the Senſe of *Littleton* alone (who indeed makes a Query about this Time beyond Memory) I appeal to all our Year-books; and if you pleaſe to ſee all the conſiderable Law-Learning at once about this Point, pray conſult *Roll*'s Abridgment (or Common-place-book) Title *Preſcription*; where he gives you theſe Concluſions, from the Year-books, which I ſhall here read to you in *Engliſh*. P. 269.

1. " It is clear enough, that there was a certain Time called Time of Memory " in a Preſcription; and for this he cites the Year-books of 19. *H.* 6. 75. *per Newton* " 1 *E.* 4. 6. *Brook.* 9. *H.* 7. 11. 14 *H.* 7. 1.

" The ſaid Time of Memory in a Preſcription was from the Time of King " *Richard* I. 20 *H.* 6. 3. *Dyer Mar.* 119. 5. 3. 4. 9. *B.* The Time of King *John* " is within Memory, *Lit. Sect.* 170. 34 *H.* 6. 36. *B.* 47. So that the ſaid Time " of Memory was from the Beginning of the Reign of King *Richard* I. (who " was Brother to King *John*, who was Father to *Henry* III.); for the whole Time " of his Reign was within Time of Memory, 20 *H.* 6. *per Newton* again, 13 *H.* " 4. 9. *B.* where the Seiſin of King *Richard* is allowed for a good Title, and ſo a " Warranty in his Time.

" So it ſeems by theſe Words *a tempore cujus contrarij memoria non exiſtit*, is " properly and generally intended for all the Time before that; and before the " Statute of Limitation, was meant of that againſt which no Proof could be made " to the contrary, either by Teſtimony or Evidence in any Time before, without " any Limitation of Time. The 34 *H.* 6. 36. *B.* 37. ſeems to prove this; ſo that the Time of all Preſcription was in thoſe Days the ſame with the Time of Limitation of Seiſin in a Writ of Writ, as *Littleton* tells us.

And ſince you have not as yet brought any conſiderable Proofs (but only bare negative ones which have been anſwered,) againſt this Preſcription of the Election of Knights of Shires Time beyond Memory; what you have ſaid to the contrary is little to the purpoſe; for all the Modern as well as Ancient Law-Books are againſt this Notion of Mr. *Pryn*'s. For in Judge *Yelverton*'s Reports, *Gibſon* and *Holcroft*'s Caſe, you will ſee that whereas Unity of Poſſeſſion is by the Statute of the Diſſolution of Monaſteries a good Diſcharge of Tithes; yet if the Monaſtery were founded *deins Temps de Memorie* (as this Abby of *Vale Royal* was in the Time of *Edward* I.) a conſtant Unity ſince the Foundation, was held by the whole Court for no good Diſcharge of Tithes by Preſcription as the Plaintiff had laid it; for the Defendant ſhewing that the ſaid Abbey was founded ſince Time of Memory (tho' above Three Hundred Years old) was a ſufficient confeſſing and avoiding. P. 31, 32.

So that Mr. *Pryn*'s Arguments whereby he would have the Words, all Times paſſed, and Time of which no Memory is to the contrary, to ſignify a much leſs Space of Time in theſe Writs I have now cited, and to be reſtrained within the 49th of *Henry* the Third, will not ſignify much, ſince they are expreſsly againſt all our Law Books: Neither doth he cite any Caſes for his Opinion out of *Brook* or *Fitzherbert*, tho' he quotes their Titles. But as for this Quotation from *Cook*'s firſt Inſtitutes, there is nothing there to countenance his Notion, more than he tells us that from *Bracton* and *Fleta*, (upon the Words *de Temps dont memorie*, &c.) *docere oportet longum tempus & longum uſum*; *viz. qui excedit memoriam hominum*, P. 113. *tale enim tempus ſufficit pro Jure*; but without telling us what was then under- P. 113. "ſtood by this *memoria hominum*; and a little after upon theſe Words, *Aſcun proof* "*al contrarie*: For if there be any ſufficient Proof of Record or Writing to the "contrary, albeit it exceed the Memory, or proper Knowledge of any Man living, "yet it is within the Memory of Men: For Memory is twofold: Firſt, by Know- "ledge by Proof; as by Record, or ſufficient Matter of Writing. Secondly, By "his own proper Knowledge; and for this he cites divers Year-Books in the Margin". But as for all that long Quotation Mr. *Pryn* has here given us, I know not whence he had it; for there is not any Thing in *Hobart*'s Reports to that Purpoſe, in the Places he has cited. And as for the Year-Book of 34th of *Henry* the Sixth, and *Brook*, they are both directly againſt his Notion, as you may ſee by what *Rolls* has been already quoted from the ſame Places. And though it is true in Preſcriptions of Ways, and Commons, and other ſuch petty Things laid Time beyond Memory, the Judges or Jury are not ſo exact, as to make the Plaintiffs prove their Preſcription beyond the Time of any Man then living: Yet if they preſcribe for never ſo long, it is ſtill in the Power of the Defendant to prove that there was no ſuch Preſcription; and this as high as before *Richard* the Firſt, but no higher. And thus high we aſſert the Coming of Knights of Shires to Parliament; for I do not pretend to lay it as high as the Conqueſt, or before, as Mr. *Lambard* does. If it prove beyond the Time now ſpecified, it is ſufficient to diſprove Mr. *Pryn*'s Notion.

But to let you ſee I am a fair Adverſary, I will admit for once, that this Time beyond Memory ſhall be taken in a ſtrict literal Senſe, for only as far as is beyond the Memory of any Man living: Now, pray, ſee what you will get by it; if you remember that the Writs I but now cited from the Regiſter, for the Tenants in ancient Demeſne their being diſcharged from contributing to the Wages of Knights of the Shires, was laid, *à tempore cujus contrarii memoria non exiſtit*: And theſe Writs are proved alſo to have been iſſued within the 15th of *Edward* the IId; and if ſo, pray reckon backwards, and ſee if the 49th of *Henry* the IIId, (when you ſuppoſe Knights of Shires to have been firſt choſen) does not fall within the Memory of moſt Men then living; for *Henry* the IIId reigned ſomewhat more than Seven Years after this 49th; to which Seven Years, if you add the almoſt 35 Years Reign of *Edward* I. it makes 42 Years; then add theſe 15 Years of *Edward* II. and, if you pleaſe, ſee if the whole makes above 57 Years; which certainly was within the Memory of many Men then living: And it had been a ſenſeleſs Thing for the Chancellor, and Clerks of Chancery, that then were, to have granted theſe Writs of Exemption for a Time beyond Memory, when they themſelves might have remembred when Wages for Knights of Shires firſt began.

M. As for what you have ſaid for this Preſcription of Knights of Shires, I will not diſpute it farther with you, ſince it is a Point of your Common Law, (in which I confeſs my ſelf but meanly skill'd); but I ſhall take farther Time to adviſe with thoſe that know better. In the mean time, as for the Cities and Boroughs, let them have appeared when you will, their coming to Parliament could not be ſo ancient as before the Time of *Richard* I. much leſs the Conqueſt, as you ſuppoſe; ſince Mr. *Pryn* hath, in the ſame Second Part of this Parliamentary-Regiſter, traced the Summoning of the Boroughs to their very Original; and proved it could not be ancienter than the 49th of *Henry* the IIId. I ſhall here contract his Arguments, and give you them, as I did the former. Firſt, He here proves, that there were never Part 2. p. 214. but 170 Cities and Boroughs, who ſent any Members to Parliament; of which 170 (in his Catalogue) Nine of them never had but one or two Precepts, and others but four Precepts of this Nature ſent them; upon none of which Precepts the Sheriffs made any Returns of Burgeſſes, as theſe *Ballivi Libertatis nullum mihi dederant reſponſum*, or *nihil inde fecerunt*, atteſt: Whereupon they never had any more Precepts of this Kind ſent them to this Day, *Chriſt-Church* in *Hampſhire* only excepted;

excepted; which of late Years hath ſent Burgeſſes to Parliament; ſo that in Truth there were only 161 Cities and Boroughs in *England* that ever ſent Members to Parliament, during all the precedent Kings Reigns; *viz.* From the 26th of *Edward* the Iſt to the 12th of *Edward* the IVth. Secondly, That 22 more here named of theſe 161, never elected and returned Burgeſſes but once, and no more during all the ſaid Time. Thirdly, That many more of theſe ancient Boroughs here named, never ſent Members, ſome of them more than Twice, others Thrice, others Four, others Five, others Six, others Seven, others Eight Times: And *Lancaſter* has but 13 Elections and Returns of Burgeſſes, and no more, during all the above-mentioned Reigns. Fourthly, That altho' ſome of theſe Boroughs here named, who ſeldom ſent any Burgeſſes, though they were ſummoned by the Sheriffs Precepts to elect Burgeſſes, without any great Intervals of Time, to Six or Seven ſucceeding Parliaments, yet moſt of them had a long Diſcontinuance of Time; ſome of above 200, others above 300 Years Diſtance, between thoſe few reſpective Returns: Of which, he here gives you ſeveral Inſtances, and refers you to his precedent Catalogue of Returns for the Proof of it. So that there were but 112 Cities and Boroughs (taking in the *Cinque-Ports* and all) who ſent Members to Parliament in the Reign of *Edward* the Iſt: Seven of which made only one Return, and no more, for ought I can diſcover, before or after *Edward* the Iſt's Reign, till of very late Years. *Ibid.* P. 225, 226.

Yet that in *Edward* the IId's Reign, there were Precepts iſſued by the Sheriffs, and Returns of Burgeſſes for 19 new Boroughs there named, which (for ought I can diſcover) never elected any Burgeſſes before. Fifthly, That under this long Reign of *Edward* the IIId, there were Sheriffs Precepts iſſued to 19 more new Boroughs, and Returns made upon them to ſerve in Parliaments, or great Councils, who never ſent any Members before; and Precepts to more, that made no Returns at all thereupon. As for the *Cinque-Ports* of *Dover*, *Romney*, *Sandwich*, *Winchelſey*, *Haſtings*, *Hythe*, and *Rye*, though there be no Original Writs for, or Returns of their electing and ſending Barons to Parliament now extant, before the Reign of *Edward* III. yet it is apparent, by the Clauſe-Rolls, that they ſent Barons to Parliament in 49th of *Henry*, and during the Reign of *Edward* I. and II. Of which more anon. Sixthly, That King *Richard* II. *Henry* IV. and *Henry* V. created no new Boroughs at all, neither were there any Writs or Precepts iſſued to, or Election of Citizens or Burgeſſes by any new Cities or Boroughs, but ſuch as elected them before their Reigns. Seventhly, That about the midſt of King *Henry* the VIth's long Reign, there were Precepts iſſued to, and Returns made, by Five new Boroughs, and no more, which never ſent Burgeſſes to Parliaments before, *viz.* *Gatton* in *Surrey*, *Heytesbury*, *Hyndford*, *Weſtbury*, and *Wootton-Baſſet*, all in *Wiltſhire*; yet very poor inconſiderable Boroughs, though they elect Burgeſſes at this Day. That during *Edward* the IVth's Reign, there was one new Borough, (here named) which began to ſend Burgeſſes to Parliament under him, though it never ſent any before. *Ibid.* P. 227, 228.

F. Well, but how came this about, that ſo many new Boroughs were made in ſome Kings Reigns, and few or none in others; and ſo many omitted, that had ſerved before in other Parliaments?

M. Pray read on, and you will ſee, this Author gives us a very good Account of that; and imputes it to Two Cauſes. Firſt, The Partiality and Favour of the Sheriffs, and the Ambition of the Neighbouring Gentry, who deſired to be elected in ſuch new Boroughs. Secondly, The meer Grace and Favour of the King, who by divers Charters to new Corporations have given them the Privilege of ſending Burgeſſes to Parliaments. For Proof of which, pray ſee what this Author here farther ſays. It is evident by the precedent Sections, and Catalogue of ancient Cities, Boroughs, Ports, and their Returns of Writs and Elections before ſpecified with theſe general Clauſes after them, *Non ſunt aliæ*, or *ullæ Civitates nec Burgi in Baliva mea*, or *in Comitatu prædicto, præter Wycombe, &c.* As you may ſee by the Return of the Sheriff of *Bucks*, *Anno* 26. of *Edward* I. where he denies there were any Cities or Boroughs in his whole County; and yet the very next Parliament but one, within Two Years after, the Sheriff of *Bucks* returns no leſs than Three Boroughs; *viz.* *Agmondeſham*, *Wycombe*, and *Wendover*, with the Burgeſſes Names that were returned: So that the 78 new Boroughs, here named, were lately ſet up in the Counties ſince *Edward* the IVth's Reign, by the Practice of Sheriffs, and the Ambition of private Gentlemen ſeeking to be made Burgeſſes for them, and *Ibid.* P. 228, 229, 234.

Conſent of the poor Burgeſſes of them, being courted and feaſted by them for their Votes, without any Charters from the King, and are all mean poor inconſiderable Boroughs, ſet up by the late Returns and Practices of Sheriffs.

Ibid. p. 230. And tho' others may conceive, that the Right of our ancient Boroughs or Cities electing and ſending Burgeſſes and Citizens to our Parliaments, proceeded originally from ſome old Charters of our Kings heretofore granted to them, and to which Opinion I once inclined; yet the Conſideration of the new Diſcovery of the old Original of Writs for electing Knights, Citizens and Burgeſſes, I found in *Cæſar*'s Chappel, hath rectified my former Miſtake herein, and abundantly ſatisfied me that neither bare ancient Cuſtom or Preſcription before or ſince the Conqueſt, nor our King's Charters; but the Sheriffs of each County's Precepts and Returns of Elections of Burgeſſes and Citizens for ſuch Boroughs and Cities, as they thought meet by Authority and Power granted to them, in and by this general Clauſe in the Writs of Summons iſſued to Sheriffs, for every County before every Parliament, enjoining them in theſe Words, *Tibi præcipimus firmiter injungentes, quod de Comitatu prædicto duos milites, & de qualibet Civitate duos Cives, & de quolibet Burgo duos Burgenſes de diſcretioribus*, &c. *ſine dilatione Eligi, & eos ad nos ad dictos diem, & locum venire facias*, &c. By virtue of which general indefinite Clauſes uſed in all Writs of Summons ever ſince the 23d of *Edward* I. without deſigning what particular Cities or Boroughs by Name within each County the Sheriff ſhould cauſe to elect, or ſend Two Citizens or Two Burgeſſes, but leaving it wholly to each Sheriff's Liberty and Diſcretion to ſend the Writ directed to him to what Cities and Boroughs he pleaſed; thereupon every Sheriff uſed a kind of Arbitrary Power in the Execution of this general Clauſe, according as his Judgment directed, or his Affections, Favour, Partiality, Malice, or the Sollicitations of any private Boroughs to him, or of Competitors for Citizens or Burgeſſes Places within his County, ſwayed him. This is moſt apparent by ſome Sheriffs in ſeveral Counties returning more Boroughs and Burgeſſes than their Predeceſſors, others fewer; ſome omitting thoſe Boroughs returned by their Predeceſſors; others cauſing Elections and Returns to be made for ſuch new Boroughs, which never elected or ſent any before, nor after their Sheriffalties, as is evident from the Returns *Annis* 28. 33. *E.* 1. and 34 of *E.* 3. for *Devon.* *Anno* 26. *E.* 1. for *Yorkſhire.* *Anno* 33. *E.* 1. for *Oxfordſhire.* *Anno* 28. *E.* 1. for *Hampſhire.* *Annis* 33 and 34 of *E.* 3. for *Somerſet.* *Annis* 25. 27. and 28. *H.* 6. for *Wilts*, &c.

Ibid. p. 231, 232.

So that the firſt Writs or Memorials of any extant on Record for electing Knights, Citizens, and Burgeſſes to come to Parliament, are thoſe of the 49th of *Henry* III. but theſe Writs only commanded that the Sheriffs ſhould cauſe to come Two Knights, *&c.* of each County; and the like Writs were directed to the Cities of *London*, *Lincoln*, and other Boroughs of *England*, to elect Two Citizens and Two Burgeſſes for each of them, and the reſt of the Cities and Boroughs in *England*; the like Writs were alſo iſſued to *Sandwich* and the reſt of the Cinque Ports, without expreſſing their Names, or Number in each County: And this Form I conceive (ſays Mr. *Pryn*) continued till the 23d of *Edward* I. when the afore-cited general Clauſe authorizing and intruſting every Sheriff to cauſe Two Citizens and Two Burgeſſes to be elected, *&c.* out of every City and Borough in his County, was firſt put into the Writs, by Authority and Colour whereof every Sheriff ſent Precepts to what Cities and Boroughs of his County he pleaſed.

F. I have with Patience heard this long Hiſtory of Mr. *Pryn*'s concerning the Election of Citizens and Burgeſſes, from which I muſt notwithſtanding make bold to differ. For tho' I own him to have been a Man of great Learning and Induſtry in Matter of Records, yet I doubt he was often too quick in taking up of Opinions upon ſlender Grounds. Therefore for the anſwering of him, I ſhall firſt ſhew you the Improbability of his Suppoſitions, and in the next Place ſhall make uſe of no other Confutations than what his own Book will afford us, as to the Writs of Summons, Returns, and other Things he lays ſo much ſtreſs upon. In the firſt Place, for the Notion of Sheriffs ſending Precepts to what Cities and Boroughs they pleaſed, and conſequently making as few or as many ſend Members to Parliament as they would; that this was not ſo at firſt is evident from thoſe very Writs of the 49th of *Henry* III. by which it appears that they were not then directed to the Sheriffs, for any more than to the Counties; but as for the Citizens and Burgeſſes, and Barons of the Cinque Ports, they were then

directed to themſelves; and he alſo confeſſes, that this continued ſo from that Time till the 23d of *Edward* I. So that all this while (being about 28 Years) it ſeems the Nomination of what Cities and Towns ſhould ſend Members to Parliament did not depend upon the Will of the Sheriffs, but upon ſomewhat elſe. And I have asked you once (tho' without receiving any Anſwer) what Rule *Simon Montford* went by, to tell what Cities and Boroughs were to ſend Members, and what not, ſince the Words are only in general, *de quolibet Burgo*, &c. And therefore pray anſwer me now if you can.

M. I conceive in the firſt Place, as for the Cities, *Simon Montford* ſent to thoſe that were anciently eſteemed ſo, *viz.* ſuch as had Biſhops Sees annext to them, ſuch as *London*, *Lincoln*, particularly named in theſe Writs, and others of the ſame Rank; and as for the Boroughs, tho' we have not the Returns of them left us, yet I ſuppoſe they were ſuch walled or other Towns, as were of ſome conſiderable Note in *England*; ſuch as he thought were moſt proper for his Turn.

F. That this could be no Rule, appears by this clear Proof. Firſt, That neither *Coventry* and *Litchfield*, tho' the Sees of the Biſhops, were counted Cities in the Time of *Edward* I. nor long after; nor yet *Ely*; for it appears by the Liſts that Mr. *Pryn* hath given us, that it never ſent Burgeſſes but only once, and that only to a great Council, till of late Years. So that the Sees of the Biſhops was it ſeems no general Rule to make Places capable of ſending, or not ſending of Citizens to Parliament.

And in the next Place as to Boroughs, that is pure Imagination, that none but conſiderable or walled Towns ſent any Burgeſſes at firſt: Whereas in the firſt Liſt of Returns which Mr. *Pryn* has here given us of the 26th and 28th of *Edward* I. which are the firſt extant, for ought I know, (except thoſe of the 23d, which I have never yet ſeen) beſides the Shire Towns of the Counties, there are Returns of a great many ſmall Boroughs, which never had any Walls, nor yet (for ought as we can find) had any Thing remarkable to make them be pitch'd upon to ſend Burgeſſes more than others. But of theſe I ſhall ſpeak more by and by; only ſhall remark thus much, that there muſt have been ſome other Rule beſides *Montford*'s own Will, for all this; and what this Rule could be, unleſs an ancient Preſcription in thoſe Towns to ſend Members, I deſire you or your Doctor would ſhew any good Reaſon or Authority to the contrary.

And after the 23d of *Edward* I. when Mr. *Pryn* ſuppoſes that the Sheriffs by this general Clauſe in the Writs began to take upon them this new Authority of ſending Precepts to, and making Boroughs of what Towns they pleaſed: This could not in the firſt Place extend to ſuth as were before that, Counties of themſelves, ſuch as *London*, *York*, *Briſtol*, &c. nor yet ſuch as were ancient and opulent Cities, ſuch as *Canterbury*, *Lincoln*, *Exeter*, &c. who were not made Cities by having Biſhops Sees annext to them, but were ſuch long before Chriſtianity was preach'd to the *Engliſh Saxons*, as I have already proved. Nor could this Power of the Sheriff extend to the Cinque Ports, whoſe Right of ſending Two Barons for each Port was ſure very well known and ſettled in the 49th of *Henry* III. as appears by theſe general Words at the Foot of the Writ, *ſimiliter mandatum eſt ſingulis Portibus pro ſe*, without naming them in particular; ſo that if it had not been ſufficiently known what Ports were thus to ſend, all the conſiderable Sea-Port Towns in *England* might have had Precepts ſent them as well as the Cinque Ports; who had at firſt their Summons directed to the Barons and Bailiffs in general. Nor is there any Writ found directed to the Warden of the Cinque-Ports to ſummon each of them to ſend Burgeſſes, till the 17th of *Edward* II. as Mr. *Pryn* here ſhews you: So that in all theſe Elections and Returns, (being above Twenty)) the Sheriff could have no Power, and therefore did not depend upon his good Will and Pleaſure alone, as this Author would have it. *Ibid.* p. 245.

But to come to that which Mr. *Pryn* chiefly inſiſts on, *viz.* the putting in and leaving out divers of the ſmaller Boroughs in ſo many King's Reigns, and which he attributes wholly to the Favour or Partiality of the Sheriffs. I ſhall firſt argue againſt the Improbability of the Notion, and ſhall then confute it by plain Proofs from Mr. *Pryn* himſelf. Firſt, It is not at all likely, the King ſhould ever truſt the Sheriff with this great Prerogative of making what, or as many, Boroughs as he pleaſed in a County; ſince that could not be then done without ſome particular Writ or Charter; for otherwiſe this had made the Power of the Sheriff more arbitrary than that of the King himſelf; if he had in thoſe Reigns you treat of, no other Rule to go by than his

his own Humour, Paſſion, or Intereſt: Nor would the King have ever endured ſuch an Innovation, ſince it would have been in the Power of the Sheriffs to have made as many Boroughs as they pleaſed, and to have increaſed the Houſe of Commons to an unreaſonable Bulk, which was againſt all Rules of Policy for him to ſuffer. Laſtly, Neither would the Houſe of Commons themſelves have ſuffered this Encroachment: For ſince moſt of the Cities and Boroughs of *England* ſent Members to Parliament before this Innovation of the Sheriffs began, they would never have quietly permitted new Men to be ſent in among them, from obſcure Places they never heard of, without either turning them out themſelves, or complaining to the King in Parliament of ſo great an Abuſe. Nor yet would theſe ſmaller Boroughs themſelves have thought it a Privilege in thoſe Days, when they paid their Burgeſſes Wages all the Time of their Service in Parliament, to be thus forced to elect and ſend Burgeſſes to Parliament, whenever the Sheriff pleaſed to ſend them a Precept ſo to do.

Vid. Parl. Reg. Sect. 8. *M.* But what can you ſay againſt direct Matter of Fact? Has not Mr. *Pryn* here plainly proved to you, that the Sheriffs did in thoſe Times exerciſe an Arbitrary Power in this Matter, returning ſome Towns out of Ill-will only, to charge them with electing Burgeſſes, to make them liable to the Payment of Wages to them; omitting of others alſo out of Spite, as appears by this Petition of the Towns-Men of St. *Alban*'s you have now cited; a great many of which were ſo long omitted, that they came at laſt to loſe all Right of ſending any more, till it came to be again revived of late Years (as in the Caſe of divers Boroughs, whoſe Names *Ibid.* 238. Mr. *Pryn* has here given us) who by Orders of the Long Parliament in 1640, again ſent Members to Parliament after ſome Ages Intermiſſion? Pray now tell me, what other Satisfactory Account can be given, for the making of ſo many new Boroughs, and omitting ſo many old ones, but the Arbitrary Power of the Sheriffs, who then took upon them to do what they pleaſed in this Matter; as appears by ſo many Inſtances he has here given us?

F. Well, ſince the Improbability, (I may ſay Impoſſibility of the Thing) will not ſatisfy you, I doubt not but to ſhew you, that though the Sheriffs might ſometimes abuſe the Truſt committed to them, in ſending Precepts to the Boroughs that were not liable to them, yet that for all this they never exerciſed that Arbitrary Power you fancy, of making and unmaking what Boroughs (and conſequently as many Parliament Men) as they pleaſed. Now to prove this from Mr. *Pryn*'s own Inſtances and Authorities, I ſhall reduce all the Cauſes of this Abuſe to theſe Heads: 1. The Favour, or Malice of the Sheriffs. 2. The Ambition of the Neighbouring Gentlemen, who deſired to get to be elected at ſuch Boroughs. Or, laſtly, From the Deſire of thoſe Towns themſelves, to get this Privilege among them of Electing and Returning Members to Parliament. To begin with the firſt of theſe; It could never proceed from the Favour of Sheriffs to ſuch Towns, becauſe the Charge of Wages to the Burgeſſes was then ſo great (when Two Shillings a Day was more than Ten Shillings is now) that they could never look upon it as a Favour, to have this Charge impoſed upon them; unleſs it were ſome few, who were very large, and in a rich and flouriſhing Condition, and thoſe always ſent Burgeſſes to Parliament before the Sheriffs had this Power committed to them, as you ſuppoſed, by that general Clauſe in the Writ of ſending Summons to the Cities and Boroughs. Nor could the Sheriffs (if they would) have long continued to lay this Burthen upon any Town out of Malice; for if ſuch Towns could not afford this extraordinary Charge of ſending Burgeſſes to Parliament, they might have 'ſcaped it whenever they would; either by making no Returns at all to their Precepts ſent them, as Mr. *Pryn* here ſhews, in the Liſts he has given us of Returns, very many of them did; or elſe they might have taken that Remedy againſt *Ibid. p.* 233. it, "which (as this Author here expreſsly acknowledges) divers Towns did; who be-
" ing maliciouſly charged by the Sheriffs to ſend Burgeſſes, when both unwilling
" and unable; and who upon their Refuſal to elect, returned Burgeſſes for them a-
" gainſt their Wills; whereupon they complained to the King or Parliament of the
" Abuſe, and ſo were eaſed of this Charge and Trouble, or elſe eaſed themſelves:
" Other Boroughs growing very Poor, and unable to ſend Burgeſſes to Parliament,
" and defray their Expences, were thereupon diſcharged by the Sheriffs who made
Ibid. p. 233, 236. " ſpecial Returns in their Favour; (and of theſe he gives you ſeveral Inſtances, in
" his Collection of Returns for the County of *Bucks*, as alſo in the Caſe of *Lan-*
" *caſter*); whilſt others procured perpetual, or elſe temporary Exemptions from the
" King and his Council from ſending Burgeſſes to future Parliaments; and upon
" ſome

" ſome one or more of theſe precedent Grounds, they quitted, waved, or loſt " their ancient Privilege of ſending Burgeſſes, which they rather reputed a " Charge, Burthen, and Oppreſſion, than an Honour". And of this he gives us a remarkable Inſtance in *Toriton* in *Devonſhire*, which after having elected and returned Burgeſſes to no leſs than Thirty two Parliaments; yet in the 42d of *Edward* III. upon their Petition to the King in Parliament, obtained a Patent to be exempted for ever, which he here gives us, as alſo a temporary Exemption from King *Richard* II. to the Town of *Colcheſter* for Five Years, in regard of their great Charge in building their Town-Walls: Which ſhews that the Burgeſſes Wages was then a great Burthen even upon Towns rich and flouriſhing in Trade, which were then able to wall their Towns at their own Expence. And I could ſhew you more ſuch Exemptions as theſe, were it not too tedious; and I doubt not but there were many more ſuch than what are entred upon the Rolls.

Ibid. p. 239.

Rot. Parl. 42. *E.* 3. part 1. m. 8.

Ibid. p. 241.

Now that we may apply what Mr. *Pryn* has here ſaid, to our preſent Purpoſe; it is granted, that tho' the Sheriffs might ſometimes oppreſs ſome Towns by ſending Precepts to them to elect, who ought not to have ſent Members to Parliament at all; yet that he could not make new Boroughs without the Inhabitants Conſent, is plain by his own ſhewing, ſince they could be eaſed of that Charge whenever they pleaſed. And I deſire you, or any one elſe, to ſhew me any City, or conſiderable Town in *England*, that thus began firſt to ſend Citizens or Burgeſſes to Parliament by the Sheriff's Arbitrary Power. Not but that ſome Towns might complain of this Abuſe of the Sheriffs without any juſt Cauſe, as in this Petition of *Toriton* now mentioned, where they ſet forth, *quod villa prædicta ad mittend. aliquos homines pro dicta villa ad Parliamenta noſtra onerari non debeat, nec aliquos homines prædicta villa, ad Parliamenta noſtra vel Progenitorum noſtrorum miſerit, nec mittere conſueverit ante annum Regni noſtri viceſimum primum*, &c. Now tho' this Petition was falſe in Matter of Fact, ſince it appears by the former Returns that they had ſent Bugeſſes to Parliament long before, in the Reigns of *Edward* I. and II. yet the Ground of their Petition was right, that they ought not to ſend any Men to Parliament, unleſs they had been accuſtomed ſo to do in the Time of this King's Progenitors; which had been a vain Plea, if it had been in the Sheriff's Power (as of Right) to have ſummoned what Towns they pleaſed to Parliament, ſince then there could have been no Cuſtom pleaded againſt it.

Vide the Patent of Exemption, *Parl. Reg.* part 2.

This being granted by Mr. *Pryn*, and proved from the Nature of the Thing, we ſhall come now more particularly to give an Account how ſeveral Towns might come to be put in or left out of the Sheriffs Liſts of the Boroughs, without granting them this Arbitrary Power of making what Boroughs they pleaſed. Now theſe 170 Cities and Towns Mr. *Pryn* has given us, and which have had Precepts ſent them at any Time, may be divided into theſe Three Ranks: The Firſt is of thoſe (who being nine in Number) which he ſays never made any Returns to the Precepts ſent them, and ſo continue to ſend no Members to this Day (except *Chriſt-Church* in *Hampſhire*.) Now theſe Nine Towns either had a Right to ſend Burgeſſes to Parliament in the King's Reigns, in which they received thoſe Precepts, or they had not; if they had ſuch a Right, the Sheriffs did but their Duty to ſend them Precepts as well as to the reſt of the Boroughs of the County. For ſure they had ſome Rule for doing it, more than their own private Fancies; ſince the very Writ of Summons (from whence you would deduce this Power to the Sheriffs) only recites *de qualibet Civitate*, &c. & *de quolibet Burgo*, &c. which had been mighty uncertain, if had not been then very well known what Towns were then Cities, and what Boroughs: And ſure theſe Nine Towns muſt have then been Boroughs (in Reputation at leaſt) or elſe they could never have had one, two, or more Precepts ſent them (as Mr. *Pryn* here owns they had) and they might have had many more ſuch for ought we know, had all the Sheriffs Precepts, and the Returns upon them been preſerved, as moſt of them are loſt or miſlaid, as I ſhall ſhew more at large by and by. Or if theſe Towns had no Right at all to ſend Burgeſſes to Parliament, it was not in the Sheriff's Power to impoſe it upon them; ſince they might have refuſed it if they pleaſed. And ſo take it either way, nothing can be argued from the Loſs or Omiſſion of the Returns for theſe Boroughs, that they either had, or had not any former

Vid. Parliam. Regiſt. Part 2. p. 224.

former Right to elect; ſince this might happen from the Negligence of the Bailiffs, or Conſtables of the Town, or elſe from their own Deſire to be excuſed from
Ibid. p. 201. the Charge. Thus in the 28th of *Edward* I. the Sheriff returns, that the Bailiffs of St. *Alban*'s had made no Return of his Precept: Neither is there any Returns of ſuch Precepts to this Borough all the Reign of this King: Does it therefore follow, That this Town had no more Precepts ſent them in all his Reign? When I have ſhewed you the contrary by the Writs of Expences in the 35th of *Edward* I. Or that they had no other Right to appear in Parliament as a Borough, but what the Sheriff's Precept firſt gave them; when you ſee they claimed by their Petition to *Edward* II. to ſend Burgeſſes to Parliament in the Reign of this King and his Progenitors.

The Second Rank of Towns are ſuch for which are found, for ſome one, for ſome three, and for others more Precepts, with Returns of Elections made thereupon; and yet thoſe that have made the moſt Returns do not amount during the Reigns of *Edwards* I, II, and III. *Richard* II. *Henries* IV, V, and VI. to above Thirteen Returns. Well, granting all this, will it therefore follow, that they had no other Right than the Sheriffs good Will and Pleaſure? Since if they had a Right, and were willing to preſerve it, they might have petitioned the King in Parliament againſt this Abuſe of the Sheriffs. And if they were willing to give up their Right, by Reaſon of the great Charge and Trouble of ſending their Members, *volenti non fit injuria.* Now does it therefore follow, that no others had any other Right to elect, but what the Sheriffs Precept gave them; only, forſooth, becauſe no more Returns appear either in the looſe Bundles of Returns, or upon the Clauſe-Rolls? Or that therefore there were never any more Elections and Returns made than what Mr. *Pryn* has here given us? Which is a very fallacious Argument, conſidering how imperfect thoſe Bundles of Returns are, out of which he has extracted them; moſt of the Precepts and Returns being no doubt loſt and broke off the Files, in the removing of the Records from one Place to another; beſides the whole Bundles of Returns of ſeveral Years in divers Kings Reigns, that are quite loſt, or ſo miſlaid, that no body can find them. And for the Truth of this, I appeal to Mr. *Petyt*, who aſſures me, he found the Returns of the Knights, Citizens, and Burgeſſes to Parliament of the 23d of *Edward* I. in an old Cheſt in the *Exchequer*, among other Things of a quite different Nature; which Mr. *Pryn* never ſaw, or elſe certainly he would have given us the Returns to this Parliament, as well as
Parl. Regiſt. Part 1. p. 33. he does the Writs of Summons to it: And yet that even theſe were not always entred upon the Clauſe-Rolls, but lay ſcattered up and down the Chapel of the *White-Tower*, Mr. *Pryn* alſo himſelf confeſſes, (in his Introduction to his third Part of his Parliamentary-Regiſter), "That he found no leſs than Ninety five looſe "Original Writs for Elections and Returns of Knights, Citizens, and Burgeſſes to "Parliaments and great Councils, in the Reign of *Edward* III. which were never "entred on the Clauſe-Rolls; and lay there until he found them buried in Duſt "and Rubbiſh, as well as Oblivion, in a confus'd Chaos, ſcattered from each other, "and intermixed with many Hundred Thouſands of other Writs and Records of "various Kinds". Now what if theſe Writs and Returns had never been found? So that by his own Shewing, it is no ways certain that there were never any other Writs iſſued, or Returns made for the Counties, Cities, and Boroughs, than thoſe he had before found and publiſhed. And he himſelf alſo here confeſſes, "That by "reaſon of the Negligence of Record-Keepers, there are more Writs and Returns "of Elections extant from ſome Counties than for others, though all had the like "Writs ſent them". And if this was ſo as to the Counties, it might be likewiſe ſo as to the Cities and Boroughs; the Returns of which are commonly indorſed on the Back of the Precepts; and where they were not ſo indorſed, were much more likely to be loſt. And farther, that the Clauſe-Rolls are no exact Rule for the Summons of Knights or Barons of the *Cinque-Ports* and Burgeſſes, appears by Mr. *Pryn*'s own ſhewing; *viz.* That there are no Writs of Summons to the *Cinque-Ports* en-
Parl. Regiſt. Part 3. p. 243. tred on the Clauſe-Rolls, for moſt Part of the Years of the *Edwards* I, II, and III. in the Liſt he has here given us of thoſe Years. Now if ſo many conſiderable Boroughs, as the Cinque-Boroughs, could be thus omitted, what can we expect for moſt of the ſmaller, and moſt inconſiderable Boroughs in *England?*

To conclude this Head; If by Mr. *Pryn*'s own Confeſſion, the Entries of Elections, and Returns upon the Clauſe-Rolls, are ſo very imperfect; and that the looſe Bundles of Summons, Precepts, and Returns, are far more imperfect (ſo many of them

them being loſt) pray tell me, How can he, or any one elſe, frame any Argument from theſe that remain, that there were never any more Precepts to, and Returns from Cities and Boroughs, than thoſe he has publiſhed.

But to come to his Third Rank of Boroughs; *viz.* Such as for whom there appear no Precepts nor Returns, till the Reigns of *Edwards* II, and III. and other ſucceeding Kings; all which Boroughs he therefore ſuppoſes to have been newly made in thoſe King's Reigns, becauſe there are no Precepts or Returns from them found ſooner. It muſt therefore follow that the Sheriffs made all theſe Boroughs at their Pleaſure; but Mr. *Pryn* has done well here to add, that they never elected or returned any before, *for ought he can find to the contrary*; ſince it might appear to the contrary (for ought he could tell) if the Returns of the Sheriffs in the Reigns of the former Kings had been ſtill preſerved; as appears by the Inſtance of the Cinque Ports I juſt now mentioned: Or how could Mr. *Pryn* tell, but divers of theſe Towns might have been created Boroughs by the King's ſpecial Writs or Charters, tho' now loſt, or perhaps unknown to this Author, who could not be ſuppoſed to underſtand the Original of all the Boroughs in *England*, their ſending Members to Parliament? But that he is certainly miſtaken in making ſeveral Boroughs to have been but new, becauſe no Returns are to be found from them before the Reign of *Edward* II. may appear by theſe for Example. Firſt, *Litchfield*, which was long before that Time a Biſhop's See; and ſure then if not a City, yet an ancient and conſiderable Borough. Secondly, Old *Sarum*, which was in the Reign of *Henry* III. a Biſhop's See (till it was removed) and if not, was certainly a very ancient Borough, and as ſuch ſends Burgeſſes by Preſcription to this Day, tho' the Town be quite deſtroyed. The like I may ſay of *Gatton* in *Surry*, which tho' Mr. *Pryn* will have but to be a new Borough, becauſe no Returns appear to have been made for it by the Sheriffs, till the Reigns of *Henry* VI. yet this is no certain Rule; ſince it was a very old Borough, and had anciently been ſo conſiderable, as that we find ſeveral great Councils held at it in the *Saxon* Times, tho' it be certainly now reduced to a ſmall Hamlet of half a ſcore Houſes. Now I will leave it to your ſelf to judge, whether the Sheriff would have pitch'd upon ſo ſmall and inconſiderable a Place as this to make a Borough of, had it never ſent any Burgeſſes to Parliament before that Time. And I doubt not, but thoſe Gentlemen that know the reſt of the ſmaller Towns Mr. *Pryn* has there mentioned with *Gatton*, could ſay as much for their Antiquity as Boroughs, if you pleaſe to enquire about them.

Ibid. p. 227.

But I have held you too long upon this Point, and therefore ſhall proceed to thoſe Two that remain, *viz.* The Ambition of neighbouring Gentlemen to make as many Boroughs as they could, that they might be choſen at them; and the Deſire of ſuch Towns to be made Boroughs, to receive the Advantages of the Money ſpent among them at ſuch Elections. The firſt of theſe, in the Times we are now ſpeaking of, could be no Cauſe of their ſending Members to Parliament: Since it is certain, that before the Reign of *Henry* VIII. none were elected for any City or Town, but Perſons free of, or actually reſident in ſuch Cities and Boroughs; as appears by the Statute of the Firſt of *Henry* V. which does but recite and confirm this ancient Cuſtom. So that this Trick of chuſing Members for Beef and Ale has been introduced but of late Times, *viz.* ſince the Reign of *Henry* VIII. when Gentlemen began firſt to be choſen for Cities and Boroughs: And if that is ſo, the laſt Cauſe falls of it ſelf, *viz.* The Deſire of ſuch ſmall Towns to elect; ſince if they could get nothing, but rather loſe by their ſending Burgeſſes to Parliament, and paying them their Wages (as they muſt do as long as they chuſe from among themſelves) it is unreaſonable to believe, that they ever ſhould deſire this as a Privilege; and therefore it is only ſince the Neglect of this good old Law for Wages, that ſo many Boroughs (which Mr. *Pryn* here mentions to have had Precepts again ſent them of late Years to elect Members after ſome Age's Intermiſſion) deſired to have this Privilege renewed to them, as was done in the Caſe of thoſe Boroughs he here mentions; which yet certainly had been very groſs, and contrary to all common Right, if the Houſe of Commons had not then believed thoſe Boroughs to have had higher Right by Preſcription than the Sheriffs Precepts gave them. As for the laſt Rank, *viz.* thoſe Boroughs created by the Writs or Charters of our Kings, I need ſay but little, ſince this Author here grants ſuch Creations to have been good before the Statute of the 5th of *Richard* II. but not ſince; tho' I cannot ſee any Reaſon for it why he ſhould give

Ibid. p. 238.

the Sheriffs ſuch Power of making new Boroughs after this Statute, in the Time of *Henry* VI. as he does in the Caſe of *Gatton*, and thoſe other Boroughs he there mentions with it; and yet deny this King the like Prerogative. And I find no ſuch Grant till the Reign of *Edward* VI. But yet for all this, as I will not ſay there were none; ſo are there but very few Examples of Charters, that confer upon any City or Borough, a Power to ſend Members to Parliament, who had it not before by Preſcription; tho' I grant that Privilege may be mentioned in the Charter, and ſo put it in the Power of the Mayor and Aldermen to elect for the future; when it was the whole Populace, or all the Inhabitants of that Town that were to elect before: Of which I could give ſeveral Inſtances, were I not ſtreightned in Point of Time.

But to ſhew you from the very Statutes themſelves that Mr. *Pryn* has here cited, that the Right of the Cities and Boroughs to appear in Parliament, was not anciently looked upon to have had no other Original than the Favour of the Sheriffs; pray read theſe Clauſes of the Statutes he has here quoted: The firſt is that memorable Statute of the 5th of *Richard* II. 2 *Parl.* c. 5. (now mentioned, and which
Ib. p. 240, 241, I have already cited) which expreſly enacts, "That all and ſingular Perſons and "Commonalties which from henceforth ſhall for Time to come have Summons of "Parliament, ſhall come from henceforth as before to Parliaments, in the Manner "as they be bound to do, and hath been accuſtomed within the Realm of *England* "of old Time. And whatever Perſon of the ſaid Realm, which from henceforth "ſhall have the ſaid Summons (be he Archbiſhop, Biſhop, Abbot, Prior, Duke, "Earl, Baron, Banneret, Knight of Shire, Citizen of City, Burgeſs of Burgh, "or other ſingular Perſon or Commonalty) do abſent himſelf, and come not at "the ſaid Summons, (except he may reaſonably and lawfully excuſe himſelf "to our Sovereign Lord the King) he ſhall be amerced, and otherwiſe puniſhed, "according *as of old Times* hath been uſed to be done within the ſaid Realm in "the ſaid Caſe. And if any Sheriff of the Realm be henceforth negligent in making his Returns of the Writs of the Parliaments, or that he ſhall leave out of "the ſaid Returns any Cities or Boroughs which he bound, and *of old Times* were "wont to come to Parliament, he ſhall be puniſhed in the Manner as was accuſtomed to be done in the ſaid Caſe of *old Time*, in the *French* (*d' Antiente*".) From which Statute we may draw theſe Concluſions: Firſt, That the Knights, Citizens and Burgeſſes, are ſuppoſed by this Statute to have a like Right to have Summons to Parliaments as hath been accuſtomed of old Time, as well as the Lords Spiritual and Temporal here mentioned. Secondly, That by theſe Words, have been accuſtomed of old Time (or *d' Anciente*, as it is in the *French* Record) we are to underſtand a general Cuſtom of the Realm, Time out of Mind, that is, by Preſcription: So that if the Biſhops, Abbots, and Temporal Lords, are here acknowledged to have had a Right to ſit in Parliament by Preſcription; ſo have the Commons likewiſe by the ſame Words equally applied to all the Orders here mentioned. Laſtly, That if any Sheriff ſhall neglect in making Returns of any ſuch Cities and Boroughs, which were thus bound to come to Parliament of Old Time, he ſhall be puniſhed, as hath been accuſtomed to be done in all Time paſt (or *d' Anciente*.) Now pray tell me with what Colour of Juſtice, the Sheriffs could be thus puniſh'd, if there had been no certain Rule to know what Cities and Boroughs were bound to come to Parliament of Old Time, but it had been wholly left at the Sheriff's Diſcretion which they ſhould ſummons, and which they ſhould omit? Let us next compare this with the Statute of the 23d of *Henry* VI. c. 15. (which Mr *Pryn* has here alſo given us) reciting, "That divers Sheriffs of Counties have "ſometimes returned none of the Knights, Citizens and Burgeſſes lawfully choſen "to come to the Parliaments; but ſuch Knights, Citizens and Burgeſſes have been returned, which were never duly choſen, and other Citizens and Burgeſſes than "thoſe which by the Mayor and Bailiffs were to the ſaid Sheriffs returned, and "moreover by no Precepts to the Mayors and Bailiffs, or to the Bailliff or Bailliffs, where no Mayor is, for the Electing of Citizens and Burgeſſes to come to "the Parliament; and then appoints the Penalties for the ſaid Abuſes and Neglects.

Now pray tell me, whether this bare Abuſe of the Sheriffs, and Neglect of the Duty of their Office, here condemned by this Statute (and for which the Statute of *Richard* II. declares them puniſhable at Common Law, as this Act makes them liable to it by Statute-Law) could give them ſuch an Arbitrary Power, as this Author fancies; much leſs can ſerve to corroborate "his Opinion (as he here

"ſuppoſes

" ſuppoſes it does) concerning the true Original, Continuance, Diſcontinuance,
" Reviving and Antiquating Parliamentary Cities and Boroughs, not by Charters and
" Patents from the King, or Preſcription Time out of Mind, but by the Sheriffs
" Power and Arbitrary Returns, by the forecited general Clauſes in their Writs?

But ſince I confeſs I have dwelt too long on my Anſwer to Mr. *Pryn*'s Arguments, I ſhall conclude with only giving you one Record, which I hope will ſufficiently ſatisfy you, that not only St. *Albans*, but ſeveral other ancient Boroughs claimed to ſend Burgeſſes to Parliament by Preſcription: Which appears by a Writ or Commiſſion from the King, reciting a Petition of the Town of *Barnſtaple* to King *Edward* III. and his Council in Parliament, which is alſo to be found in the Patent-Rolls of the 17th of this King, ſetting forth, That the ſaid Town hath been a Free Borough *à tempore cujus contrarij memoria non exiſtit*; and as ſuch, enjoyed divers Liberties, and Free-Cuſtoms, by a Charter of King *Athelſtan*: And this among others, *ac quod ad ſingula Parliamenta noſtra, & dictorum Anteceſſorum noſtrorum*, (among which the ſaid King *Athelſtan* muſt certainly be reckoned for one) *duos Burgenſes pro Communitate ejuſdem Burgi mittere ſolebant*; and therefore that Charter being loſt, they deſire a Confirmation of it from the King. Whereupon he by this Commiſſion directs a Writ of Enquiry to ſeveral Gentlemen and others therein mentioned, to enquire if the ſaid Burgeſſes had enjoyed all thoſe Liberties ſo granted by the ſaid Charter of King *Athelſtan*, or not. Which would have been ridiculous, if the King and Council had been ſatisfied that no Cities and Boroughs ſent any Members to Parliament under the *Saxon* Kings, or at leaſt before the 49th of *Henry* III. And this Authority is the more remarkable, becauſe *Barnſtaple* is one of Mr. *Pryn*'s modern Boroughs, for which he can find no Precepts or Returns earlier than the 26th of *Edward* III. tho', no doubt, as appears by this their Petition, in the 17th of this King, it had ſent Burgeſſes to Parliament many Ages before, tho' the Precepts and Returns upon them be all loſt. Part 1. m. 20. *dorſo.*

And that not only the Cities and Boroughs do thus claim by Preſcription, but that the Knights of Shires have always claimed the ſame Privilege, may appear by another Petition of the Commons Houſe, extant on the Parliament-Rolls of the 51ſt of *Edward* III. which I ſhall contract and put into *Engliſh* out of *French*, reciting thus, " Becauſe of Common Right (in the Roll *de Commune droit*) of the Realm, " there are, and ſhall be elected Two from every County of *England* to come to " Parliament for the *Commune* of the ſaid Counties: And alſo the Prelates, Dukes, " Barons, Counts Barons, and ſuch as hold by Barony, which are, and ſhall be " ſummoned by Writs to come to Parliament, except the Cities and Boroughs " who ought to elect from among themſelves ſuch as ought to anſwer for them. M. 5. n. 45.

Whence we may conclude, that the Commons then claimed to come to Parliament of Common Right, (that is, by Common Law, or general Cuſtom of the Realm, Time out of Mind) as much as the Biſhops, Abbots and great Lords. 2. That neither the Biſhops, Lords, nor Tenants *in Capite*, had any Authority to impoſe Taxes, or make Laws for the Commons of the Counties, or theſe for the Cities and Boroughs, without their Conſents; becauſe they had each of them Repreſentatives of their own Order to anſwer for them in Parliament.

M. I muſt confeſs this would have been abſolutely convincing, could we have ſeen this Charter of King *Athelſtan*'s; but ſince the Towns-men of *Barnſtaple* do only in their Petition (among others) ſet forth this Privilege of ſending Burgeſſes to Parliament; now who can tell whether there were any ſuch Thing in their Charter or not; ſince they confeſs they had loſt it? Or granting it was as they ſet forth, yet this will ſufficiently evince, that the Right of Cities and Boroughs to ſend their Repreſentatives to Parliaments, was not, as you ſuppoſe, as ancient as the Government, but had its Original from the Grants and Charters of former Kings.

F. As to theſe Objections, we can have but all the Proof that this Subject is capable of at ſuch a Diſtance of Time: But if I were a Jury-Man in this Matter, I ſhould rather believe that the Town of *Barnſtaple* had ſuch Charter not long before they made this Petition to King *Edward* III. and that there was ſuch Clauſe therein as they here ſet forth; than that theſe Towns-men ſhould be ſo impudent as to deſire a new Charter of Confirmation from him of all their Privileges (of which this of electing Burgeſſes was one) if there had never been any ſuch Clauſe in it at all. But as for the other Objection, That if it were ſo, then it appears that all the Right of Cities and Boroughs ſending Members to Parliament, is derived from the Grants and Charters of former Kings; it is very fallacious; as you will

find if you consider and compare the ancient Right of the Bishops and Abbots, as also of all the Temporal Nobility, to come to the great Council of the Kingdom. Which, as to the first of them, I proved to be as ancient as Christianity it self, among the *English Saxons*: And as for the Priesthood and Nobility in general, to have been as old as the Institution of the Government it self. Now, though you grant that long before the Conquest our Kings had the Nomination of Bishops and Abbots, and also the making of Aldermen, Earls, and *Thanes*, who made the Temporal Nobility in those great Councils; will it therefore follow, That because our Kings were thus entrusted by the People with this Prerogative of naming and investing Bishops and Abbots *per Annulum & Baculum*, and also of creating those great Men now mentioned; that therefore all the Right either Order had to appear at those Councils, not only proceeded from, but depended wholly on the King's good Will and Pleasure; and that he could have chosen whether he would have named any Bishops or Abbots to vacant Sees and Abbeys, or made any Aldermen, Earls, and *Thanes*, or not; but have changed the whole Frame of the Government into an Absolute Despotick Monarchy, by destroying or omitting the Members of the great Council of the Kingdom; whether you believe the Clergy, Nobility, and People would have suffered any of those Kings to have made such an Innovation? Apply this to the Right of most of the ancient Cities and Boroughs in *England*, and see if it do not exactly agree with this parallel Case of the Bishops, Abbots, and Temporal Nobility; since as there were Priests and Nobles, who from the very first Institution of our great Councils did not owe their Original to the King, but brought it with them out of *Germany*, and to whose Suffrages the first *Saxon* Kings owed their Elections; so no doubt were there divers Cities and Towns in *England* so considerable from the Time of the Expulsion of the *Britons*, that it was thought fit to pitch upon them as most able to send Representatives to the great Councils of the Nation, that so they might imitate their old Government in their own Countrey, in which the great Cities and Towns had always a considerable Share, as they have in the *German* Diets to this Day; tho' the King might then (as he is now) be entrusted with the Prerogative of making new Cities and Boroughs with like Privilege with the old ones; tho' this was but rarely practised till the Reign of *James* I. The Two Universities being some of the first Corporations on which he conferr'd this Privilege by Charter of electing and sending Burgesses to Parliament; which Power has, I confess, been exercised even to a Grievance in the Reigns of his Son, and Grandsons; so that it were to be wish'd, that there was a Law passed, that no new City or Borough should be made for the future without an express Act of Parliament.

Now I would very gladly hear what you can farther say to so many weighty Authorities, which I have now given you; for evident it is, that if they are compared and considered in Series of Time, that neither *Edward* IId or IIId, nor their Judges or learned Councils, no nor the Parliaments of their, and succeeding Times, had ever heard any Thing of Dr. *Brady*'s *Annus Mirabilis*, or 49th of *Henry* III. which was but 43 Years before the Reign of *Edward* II. his Grand-child, and little above 60 Years before that of *Edward* his great Grandson.

M. Well notwithstanding all this, whosoever will reflect upon what the Doctor hath writ, may suspect that the Judges (nay Parliaments) were very ignorant in the
B. A. P. p. 13. History of this Nation, or that they spoke out of Design. And it is a great Argument that the Lawyers studied and knew only Popular and Lucrative Law, and not the Constitutions of the Nation before their own Time. And tho' I must confess what you have now said may seem to me to carry some weight with it; yet since I do not easily change my Opinion, upon the first hearing of a new Argument or Authority, give me leave better to consider what you have said. But in the mean Time, since you have now mentioned the *German* Diets, pray Sir, before we leave off, shew me what you undertook to prove at the first Entrance on this Subject; *viz.* That in all the great Councils, or Assemblies of States in *Europe*, which are derived from the *Germans* and *Goths*, there are found Representatives for the Plebeians or Commons, distinct from the Clergy, and greater and lesser Nobility.

F. I readily agree to your Desires, but since my own Notes concerning this Matter are very long, and that I have them not about me; Pray give me leave to make use of the Authority of Dr. *Heylin*, an Author you have no Reason to look upon as partial, since he was not only remarkable for his great Skill in History, but also as being a great Friend and Disciple to Sir *Robert Filmer* in Politicks, was a vehement Assertor of Absolute Monarchy, and an utter Enemy to the Power of Parliaments;

liaments; yet this very Perſon in his Treatiſe called, *The Stumbling of Diſobedience and Rebellion*, &c. printed 1658. in his 5th Chapter (I have already quoted for the Inferior Clergy being anciently a Part of the great Council or Parliament of the Kingdom) proves the Uniformity of the Three Eſtates to have been the ſame in all the Chriſtian Kingdoms on this ſide of *Europe*. He runs through them all, beginning with *Germany*, which I ſhall contract, becauſe he there ſays a great many other Things not ſo material to our preſent Purpoſe.

And firſt, beginning (as of right) with the *German* Empire, *Thuanus* gives this Note in general, *Imperium in tria omnino membra dividitur*, that the Empire is divided into *Three Eſtates*, over all which the Emperor is the Head or Supream Prince. Of theſe the firſt Eſtate is *ex ſacro Ordine*, of the holy *Hierarchy*, compoſed of the three *Spiritual Electors*, together with the Reſidue of the Archbiſhops and Biſhops, and many Abbots, Priors, and other Prelates. The ſecond is of the Nobility, conſiſting of Three *Temporal Electors*, the Dukes, Marqueſſes, Lantgraves, Burgraves, Earls, and Barons, of which there is no determinate Number; the Emperor having Power to add daily to them, as he ſees Occaſion. The *Third Eſtate* is of the free or *Imperial* Cities, in Number Sixty, or thereabouts, who repreſent themſelves at the General *Diets*, by ſuch Commiſſioners or Deputies as are authorized to that Purpoſe. *Auguſt. Thuan. Hiſt. lib. 2.*

Next paſs we over into *France*, and there we find the Subjects marſhalled into *Three Eſtates*, whereof the *Clergy* is the firſt. *Rex coactis* tribus *Ordinibus*, Sacerdotio, *Nobilitate*, *Plebe*, *ſubſidia rei pecuniariæ petiit.* So *Paulus Æmilius* doth inform us. Out of theſe *Three* are choſen certain Delegates or Commiſſioners, ſome for each *Eſtate*, as often as the King's Occaſions do require their Meeting; the Time and Place whereof is abſolutely left unto his Diſpoſing: And theſe thus met do make up the *Conventus Ordinum*, or *L'Aſſemblie des Eſtats*, as the *Frenchmen* call it, in Form much like the *Engliſh* Parliament: [And of the Meeting of theſe *Three Eſtates*, not only this *Author*, but all the other *French* Hiſtorians; and in particular *Phil. de Commines* make frequent mention.]

Paſs we next over the *Pyrenees*, to the Realms of *Spain*, and we ſhall find in each the ſame *Three Eſtates*, whoſe Meeting they call there by the Name of *Curia*, (in *Spaniſh* the Cortuz) or chief Court, κατ' ἐξοχὴν, by Way of Eminency; conſiſting of the *Clergy*, the *Nobility*, and the *Commiſſioners* of the Provinces, and moſt Ancient Cities. For Proof of which, we need but look into the *General Hiſtory of Spain*, tranſlated out of *French* by *Grimſton*, and we ſhall find a Court of Parliament for the Realm of *Aragon*, conſiſting of the *Biſhops*, *Nobles*, *and Deputies of Towns and Commonalties*, *having Place in the ſaid Eſtates*, convened by King *James* at *Saragoſſa*, *Anno* 1325, for ſettling the Succeſſion, and declaring the Right Heir. Alſo for *Caſtile*, we find a *Parliament of Lords*, *Prelates*, *and Deputies of Towns ſummoned* at *Toledo* by *Alfonſo* the Noble, *Anno* 1210. upon Occaſion of an Invaſion made by the *Moors*: Another before that at *Burgos*, under the ſame King, *Anno* 1179, for levying of Money on the People to maintain the Wars. Alſo that great Convention of the States held at *Toledo* by *Ferdinand* the Catholick, 1479, for ſwearing to the Succeſſion of his Son *Don John*; in which the Prelates, the Nobility, and almoſt all the Towns and Cities which ſent Commiſſioners to the Aſſembly, are expreſsly named. Thus do we alſo find a Meeting of *the Deputies of the Three Eſtates of* Navarre at the Town of *Taſalla*, *Anno* 1481, for preſerving the Kingdom in Obedience to King *Francis Phœbus*, being then a *Minor*, under Age: And for *Portugal*, that the *Deputies of the Clergy*, *Nobility*, *Provinces and good Towns of* Portugal, aſſembled at *Tomara*, *Anno* 1581, to acknowledge *Philip* the IId for their King, and to ſettle the Government of that Kingdom for the Times to come. *Bodin. de Repub. lib. 3.* *Gen. Hiſt. of Spain, l. 14.* *Id lib. 10.* *Id. lib.* *Id. lib. 22.* *Id. lib. 30.*

Now let us take a View of the *Northern* Kingdoms, and ſtill we find the People ranked in the ſelf ſame Manner; and their great Councils to conſiſt of the *Clergy*, the *Nobility*, and certain *Deputies*, ſent from the Provinces and Cities, as in thoſe before. In *Hungary*, before that Realm received the Goſpel, we read of none but *Nobiles & Plebeii*, the Nobility and Common People, who did concur to the Election of their Kings; but no ſooner was the Faith of *Chriſt* admitted, and a Clergy inſtituted, but inſtantly we find a Third Eſtate, *Epiſcopos & Sacerdotum Collegia*, Biſhops and others of the Clergy ſuperadded to them, for the Election of the Kings, and the Diſpatch of other Buſineſs, which concerned the Publick, as it continueth to this Day. In *Denmark* we ſhall find the ſame, if we mark it well. *Bonfinius in Hiſt. Hungar. Dec. l. 1.* *Id. ibid. Dec. 2. l. 2.* *Id. Decad. 2.*

Pontan. in Doria descript. Id. in histor. Rerum Danic. l. 7. For though *Pontanus* seem to count upon *Five Estates*, making the Regal Family to be the first, and subdividing the Commons into Two; whereof the Yeomanry makes one, and the Tradesman or Citizen the other: Yet in the Body of the History we find only *Three*, which are the *Bishops*, the *Nobility*, and *Civitatum Delegati*, the Deputies or Commissioners of Towns and Cities. For *Sweden*, it comes near the Government and Forms of *Denmark*, and hath the same *Estates* and Degrees of People, as amongst the *Danes*; that is to say, *Proceres & Nobiles*, the greater and the less Nobility; *Episcopi & Ecclesiastici*, the Bishops and Inferior Clergy; *Civitates & Universitates*, the Cities and Towns Corporate, (for so I think he means by *Universitates*,) as *Thuanus* mustereth them. [To which we may also add (tho' here omitted by this Author) the Delegates of the Rusticks or Husbandmen, who make a Fourth Estate in the Assembly of Estates in this Kingdom.] Where the Bishops and Clergy enjoy the Place and Privileges of the Third Estate (notwithstanding the Alteration of Religion) *to this very Day*; the *Bishops in their own* Persons, and a certain Number of the Clergy out of every *Sochen*, (a Division like our *Rural Deanries*,) in the Name of the rest, having a necessary Vote in all their Parliaments. [And this *Swedish* great Council is the more remarkable, because it comes very near our Constitution in *England*, in which I proved the Inferior Clergy, and the Commons (not excepting the meanest Freeholders) anciently had their Representatives.

Id. lib. 131.

So that it had been the strangest Thing that could have been observed in all the Political Constitutions on this Side of *Europe*, if that of *England*, tho' descended from the same *Gothick* Original, and founded according to the same Model, should have had no Representatives for the Commons or Plebeians in their great Councils, or Parliaments. Dr. *Heylin* here concludes with *Scotland* and *England*; the former of which, since you agree to have had from all Times, Citizens and Burgesses in their great Councils or Parliaments, I need not repeat what is there said, since it is no more than what you your self have granted; and as for *England*, he owns, (as appears by the Passages I have already cited out of this Chapter,) that the Clergy, Nobility, and People were called to a Parliament held under *Henry* II. at *Clerkenwell*.

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M. I will not deny, but there were Representatives of the Cities and great Towns, in the great Councils or Assembly of Estates of all those Kingdoms you have now mentioned out of Dr. *Heylins* Treatise; yet whether they were there from the very first Institution of those Governments is much to be doubted. But since I have not now Leisure to enquire into the Original of all these Kingdoms; nor at what Time each State began to come to these great Councils; give me leave in the mean Time to remark, That all these Kingdoms (except *Sweden*) came nearer to that Constitution which we suppose to have been anciently in *England* and *Scotland*, and also other Kingdoms where Feudatory Tenures were observed, and consequently none but the Chief Lords or Barons by Knights Ser-

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Service, and that held of the King; so that all those Foreign Councils, or *Dyets*, *&c.* at first were all the same, as consisting of Emperors or Kings with their Earls and Barons, Bishops, and great Officers; as is evident from all the old *German* and *French* Authors. And since Cities sent Deputies in *Germany* and *Italy*, they were only from Imperial Cities; the like I believe would be found in *France*, and those other Kingdoms you have now mentioned; but you cannot shew me, (unless in *Sweden*) any Representatives elected by the Common People, or Rusticks, distinct from the Nobility and Gentry; like our Knights of Shires in *England*. So that I still doubt, whether all the Representatives of the great Lords, and other Nobility that appeared in the Councils of these Kingdoms were not all Tenants *in Capite*, and no other.

Vid. Recoldus Discursus Polit. p. 126.

F. That this is a meer Surmise of yours, I think I can easily prove; for in the first Place, as for the Bishops, Abbots, and Clergy, who still made the first Estates in all these Kingdoms; nothing is more certain, than that they never any of them held of the King by Knight's Service, and therefore could not sit in their great Councils by that Tenure; that Institution being for ought as I know, peculiar to *England*, and introduced by your Conqueror, as you your self acknowledge. And as for the Temporal Nobility, you will find, that in *France*, not only those Noblemen that held of the King by Military Service, but those who held *in libero Alodio*, without any such Service at all, had Places, either by themselves or their Deputies, in the Assembly of the Estates. So likewise for the

Cities and Towns that ſent Deputies to it, I believe you will not find that any of them held of the King *in Capite*. And to come to *Germany*; you are likewiſe as much miſtaken, in fancying that all the Imperial Cities were ſubject immediately to the Emperor before they became ſo. For *Hamburgh* and *Lubec* were once ſubject to their own Princes; the former to the Duke of *Holſtein* and *Sleſwick*, and the latter to Earls of its own; till at laſt they either purchaſed their Liberties they enjoy from their Princes, or elſe caſt them off, and were after received into the Body of the Diet by the Bulls or Charters of ſeveral Emperors. And ſo likewiſe *Brunſwick* was always a free City, till it was united to the Empire by its own Conſent. I could ſhew you the like of ſeveral other Cities, now called Imperial, who held anciently not of the Emperor, but either of their own Earls, or Biſhops; though I grant it was the Charters of the Emperor with the Conſent of the Diet, that gave them a Place in thoſe Aſſemblies. And though it is true, that in all the reſt of theſe Kingdoms, the meer Ruſticks or Peaſants have no Repreſentatives in their great Councils; yet this makes no Alteration in the Caſe, if you pleaſe to conſider it; for the Nobility and Gentry are the only true and proper Owners of the Lands of thoſe Kingdoms; all the Ruſticks or Peaſants being meer Vaſſals, and in *France* almoſt Slaves to their Nobility and Gentry, who (as I have already ſaid) had all alike Votes in their Aſſembly of Eſtates, as well thoſe who held of the King in Chief by Knights Service, as thoſe that did not. Whereas it was always far otherwiſe in *England*, where the meaneſt Freeholder was always as free as to his Perſon and Eſtate, as the greateſt Lord of whom he held. And hence it is, that we have had from all Times thoſe of the Degree of Yeomen, ſo peculiar to *England*, as *Forteſcue* in his Treatiſe *de Laudibus Legum Angliæ* takes Notice, who if they lived on their own Lands, had no more Dependance on the Noblemen and Gentlemen, than they have now; and therefore it was but Reaſon, that theſe ſhould have their Repreſentatives in Parliament, as well as the Inhabitants of the Cities and Boroughs, who had moſt of them a far leſs Share in the Riches and real Eſtates of the Kingdom. Secondly, Pray take Notice, that in the reſt of the Kingdoms of *Europe*, except *England* and *Scotland*, there was no Difference in Point of Privileges as to being Taxed, or having Voices in the great Council of the Kingdom, between the higher Nobility, ſuch as had the Titles of Dukes, Marqueſſes, and Counts; and ſimple Gentlemen. Whereas in *England* it has been always otherwiſe (at leaſt ſince the Conqueſt); and the Earls, and Barons had by their Tenures, Places as Lords or Peers in the great Council of the Kingdom, and ſo made a diſtinct Body from the reſt of the People; whereas in other Countries, the higher Nobility and Gentry are reckon'd as all one Eſtate; and therefore it was but Reaſon, that the reſt of the Inferior Nobility or Gentry, ſhould have their Repreſentatives in this great Council, or Parliament, or otherwiſe they would have been as very Vaſſals as to their Eſtates, to the great Barons and Tenants *in Capite*, as the Boors in *Germany*, or the Peaſants in *France* were to their Lords, by whom they were taxed at their Pleaſures; which they never were in *England*, as we can find either from Hiſtory or Records. So that though I grant that it is the municipal Laws of each Kingdom or Nation, that muſt determine what are the governing Part of the People in thoſe Countries; yet though that was not abſolutely the ſame in all of them as it is in *England*, yet we find it ſo in the main; and the Repreſentatives of the Cities and Towns do ſufficiently aſſert the Right of the Plebeians or Common People, who make the Third Eſtate in thoſe great Councils. But I muſt here except *Sweden*, in which it is certain, that the meer Ruſticks or Boors had always their own Deputies in their Diets, as well as the Cities and Towns; and if *Sweden* had this Privilege, I cannot ſee why the *Engliſh* Gentry and Yeomanry (who with us make but one Body of Commons) might not have had the like, till you can ſhew me more ſufficient Proofs to the contrary.

Vid. J. Angel. Werdenhagen de Rebus Hanſeaticis, Cap. 2. p. 30.

M. Well, Sir, I ſhall conſider of what you ſay. But ſince it grows late, that we may wind up this Converſation as faſt as we can, give me leave to tell you, that though I ſhould admit all that you have hitherto averred for Truth, and that we ſhould grant the Commons of *England* to have been as Ancient a Part of the great Council, or Parliaments, as any of the other Two: What is that to the main Point in Queſtion between us, *viz.* that of Non-reſiſtance of the King upon any Account whatſoever? Or how can you juſtify thoſe of the Clergy, Nobility, and Gentry of the Church of *England*, for taking up Arms againſt the preſent King, and con-

tributing ſo much as they have done to the driving him away, and in bringing Things to this Confuſion they are now in? Since, let your Conſtitution of Great Councils and Parliaments be never ſo Ancient, let us alſo for once ſuppoſe them (as you do) to have a Share in the Legiſlative Power of the Nation, yet how can this Authorize them (much leſs any private Perſons out of Parliament) to take up Arms againſt the King, or thoſe Commiſſioned by him? Since the whole Current, both of Common as well as Statute-Law runs directly againſt you; and all with one Conſent aſſert, That the Diſpoſal of the *Militia*, or Military Force of the Kingdom, has been even ſo abſolutely in the King's Power, and at his Diſpoſal, that no Man can without being guilty of Treaſon, take up Arms (whether offenſive or defenſive) without his Commiſſion to authorize him to do it. So that no Government in the World is more averſe to all forcible Reſiſtance than our own; the King having been even from your Time beyond Memory ſo fully poſſeſs'd of the whole *Militia*, or Power of raiſing offenſive or defenſive Arms in this Kingdom, that it is expreſly forbidden by the Statute of the 7th of *Edward* I. againſt coming to Parliaments and Treaties with Force of Arms; in which the King ſets forth, *That in the laſt Parliament, the Prelates, Earls, Barons, and the* Commonalty, (*in Latin* Communitas, *or Body of the Realm*) *have ſaid, that to us* (i. e. *to the King*) *it belongeth, and our part it is through our Royal Seigneury, to defend* (that is, in old *French*, to forbid) *Force of Armour, and all other Force againſt our Peace, at all Times when it ſhall pleaſe us, and to puniſh them according to our Laws and Uſages of our Realm; and hereunto they are bound to Aid us as their Sovereign Lord, as oft as need ſhall be.* From whence you may obſerve, that it is the King's Prerogative to forbid all manner of Arms, or Armed Force within the Realm; ſo that no Man can lawfully Arm himſelf without his Authority. And this is further confirm'd by the Statute of 25 *Edward* III. concerning Treaſons; wherein it is declared, (without any excepted Caſes to the contrary) *That to levy War againſt our Lord the King in this Realm, or to be adherent to the King's Enemies in his Realm, giving them Aid or Comfort in the Realm, or elſewhere, is Treaſon.* And Sir *Edward Coke* upon this Statute ſaith thus, *That this was High Treaſon before by the Common Law; for no Subject can Levy War within the Realm, without Authority from the King; and if any Man Levy War to expulſe Strangers, to deliver Men out of Priſons, to remove wicked Counſellors, or againſt any Statute, or to any other End, pretending Reformation, on their own Heads, without Warrant, this is Levying of War againſt the King, becauſe they take upon them Royal Authority.* From which Statute, as alſo from your own Oracle's, (Sir *Edward Coke*'s) Interpretation of it, you may obſerve that it was not only Treaſon to make War againſt the King's Perſon, but to take Arms to make any Reformation or Alteration in Church or State, without the King's Authority. Nor can any Subject of *England* juſtify the taking Arms upon any Account whatſoever, unleſs it be by the King's Commiſſion. And therefore all the Judges of *England*, in the Caſe of Dr. *Story*, who was Executed for Treaſon in the Reign of Queen *Elizabeth*, did with one Conſent agree, that the very Conſultation concerning making War againſt the Queen, ſhall be interpreted a making War againſt her Perſon, and ſuppoſes a Deſign againſt her Life. So that nothing ſeems plainer to me, than that by the Ancient as well as Modern Laws of *England*, all defenſive as well as offenſive Arms, are expreſly forbidden and condemned.

Vide Dyer's *Reports.*

F. I think I ſhall be able to make out, notwithſtanding what you have now ſaid, That all Reſiſtance of the King, or thoſe Commiſſioned by him, is ſo far from being Treaſon, as you ſuppoſe, that it is every Man's Duty to oppoſe him, in Caſe he goes about to ſet up, inſtead of a Legal Monarchy, a Tyrannical Arbitrary Power in this Nation, ſince this is but to preſerve the Original Conſtitution of Parliaments, which in ſome Caſes cannot be maintained without ſuch a Reſiſtance be allowed. But to proceed to the Authorities you bring from our Statutes; As for the firſt you urge, from that 7th of *Edward* I. I think that can by no means do the Buſineſs for which you deſign it; for in the firſt Place, this is only a Declaration of the Biſhops, Lords and Commons of the Land, that it belongs to the King to defend (*i. e.* forbid) all Force of Arms: But mark, Sir, what Force: Sure it is only meant of ſuch Force as belongs to the King's Prerogative to forbid; *viz.* Force of Arms againſt the Publick Peace, and ſuch as he might puniſh according to the Laws and Uſages of the Realm; and therefore the Statute expreſly declares, that (as Subjects) they are hereunto bound to Aid him their Sovereign Lord the King at all Times, when Need ſhall be; but does this Act any where ſay, that

he

he hath an irreſiſtible Power to diſturb this Peace by his own private Illegal Commiſſions, or that any Men are bound to aſſiſt him in it; or becauſe (for Example) he hath Authority to puniſh all Men according to Law that ſhall come to Parliaments with Force of Arms, that therefore he hath an unlimited Power of raiſing what Forces he would, and impriſoning or deſtroying the whole Parliament if he pleaſed, and that no body might reſiſt him, if he had gone about ſo to do. The like may be ſaid, if the King ſhould notoriouſly and inſupportably by Force invade all the Civil Liberties and Properties of his Subjects, by levying Taxes, or taking away their Eſtates by downright Force, contrary to Law. Now can any body in his Senſes believe that the Act of 25th of *Edward* III. was made to prevent all Reſiſtance of ſuch Tyrannical Violence, and that the Reſiſtance of thoſe Forces (whether Foreign or Domeſtick) that might be ſent by the King's private Commiſſion to murder or enſlave us, is making War againſt his Perſon, or that it comes within any of the Caſes expreſſed in that Statute? And therefore cannot fall within the Compaſs of Sir *Edward Coke*'s Comment upon this Statute; all the Offences therein ſpecified being Treaſons at Common Law before that Statute was made; nor is the Reformation there mentioned, to be underſtood of a juſt and neceſſary Defence of our Lives, Liberties, Religion and Properties, as ſettled and eſtabliſhed by the Laws of the Land, to be looked upon as making War againſt a weak or ſeduced King; but is rather in Defence of him and the Government, by oppoſing Tyranny, which will certainly bring both him and us to ruin at laſt; ſo the Reformation he there mentions is only to be underſtood of ſuch Inſurrections and Rebellions as have been made under the meer Pretence of Religion, or obtaining greater Liberties for the Common Sort of People than they had by the Law of the Land; ſuch as were the Rebellions of *Wat Tyler* in King *Richard* II. and *Mortimer*'s in *Henry* VI's Reigns; not to mention the other Rebellions raiſed by the Papiſts in the Times of King *Henry* VIII. *Edward* VI. Q. *Elizabeth*'s Reigns; all which being begun by ſeditious or ſuperſtitious Men, were certainly rank Rebellions, and ſo are and ought to be eſteem'd by all good Subjects.

M. I grant theſe Pretences ſeem very fair and ſpecious; yet notwithſtanding this your pretended Right, or a Neceſſity of Reſiſtance of the King, or thoſe commiſſioned by him, in Caſe of Tyranny, has been ſtill looked upon as Rebellion in all Ages, and the Actors dealt with accordingly whereever they were taken.

F. I do not deny but as long as Arbitrary and Tyrannical Princes could get the better of it, and keep the Power in their own Hands, they ſtill executed for Traytors whoſoever oppoſed or reſiſted their wicked and unjuſt Actions, tho' they were never ſo near Relations to them: Thus both *Edward* and *Richard* II. put their Uncles the Dukes of *Lancaſter* and *Glouceſter* to death, meerly becauſe they joyned with the reſt of the Nobility and People to prevent their Deſigns. So that it is not the Execution of the Man, but the Cauſe that makes the Traytor; ſince Princes are ſeldom without a ſufficient Number of Judges and Jurymen to condemn whomſoever they pleaſe to fall upon.

But that the Clergy, Nobility and People of *England* have always aſſerted this Right of Self-Defence, in Caſe their Liberties and Properties were unjuſtly invaded by the Tyrannical or Arbitrary Practices of the King, or thoſe about him, I think I can prove, by giving you the Hiſtory of it in ſo many Kings ſince your Conqueſt, as will render it indiſputable, if you pleaſe now to give me the hearing, or elſe to defer it till the next Time we meet.

M. I confeſs I was ſo weary of ſitting up ſo long at our laſt Converſation, that I made a Reſolution not to do ſo any more; and therefore ſince it grows late, let us leave off now; and I promiſe to meet you here again within a Night or Two, and then I will hear how well you can vindicate your Right of Reſiſtance from Law or Hiſtory. But if you have no better Proofs for it than the Rebellion of the Barons in King *John* and *Henry* IIId's Reign, you will ſcarce make me your Convert; ſince Impunity does never ſanctify a wicked Action, or render it the more lawful; and you have already given it me for an Axiom, that *a Facto ad Jus non valet conſequentia.*

F. I accept of your Appointment with Thanks; but pray do not forejudge my Arguments till you hear them; and as for the Axiom, I allow it for good, provided I may urge it in my Turn: But in the mean Time I ſhall wiſh you good night.

M. And I the ſame to you.

Bibliotheca Politica.

DIALOGUE IX.

Whether by the ancient Laws, and Conſtitutions of this Kingdom, as well as by the Statutes of the 13th and 14th of King Charles *the Second, all Reſiſtance of the King, or of thoſe commiſſioned by him, are expreſly forbid, upon any Pretence whatſoever. And alſo, Whether all thoſe who aſſiſted his late Majeſty King* William, *either before, or after his coming over, are guilty of the Breach of this Law.*

F. SIR, I am glad to ſee you again ſo ſoon; for I was juſt now looking over ſome of our old Hiſtorians, that lie here upon the Table, to rub up my Memory for ſufficient Inſtances and Authorites, that it hath been always the received and conſtant Cuſtom and Practice of the Clergy, Nobility, and People of this Nation, to defend the ancient Government of this Kingdom by general Councils or Parliaments; as alſo their juſt Liberties and Properties, not only by Remonſtrances and Petitions, but by Force too, againſt the King, and thoſe commiſſioned by him, in caſe they found them evidently and violently invaded, beyond what any fair or gentle Means, as Petitions and Interceſſions, were able to redreſs. And for Proof of this, I ſhall go as high as the Times of the Kings of the *Weſt Saxons*, from whom all the Kings of *England* before the Conqueſt were deſcended, after the Kingdom of the *Weſt Saxons* had prevailed over all the reſt. I ſhall therefore begin with the Reign of *Sigebert* King of the *Weſt Saxons*, who, as I told you in our 6th Converſation, breaking the Laws and Conſtitutions of the Kingdom, and tyrannizing over all Sorts of People, was in a General Council of the whole Kingdom depoſed, and expelled into the Foreſt of *Andredſwald*, where he was afterwards ſlain by a Hogherd; as the *Saxon* Annals under the Year 755. as alſo *Huntingdon*, and *Malmsbury*, relate. I ſhall not mention the Depoſition of King *Edwin*, by the *Mercians* and *Northumbrians*, and their chuſing his Brother *Edgar* in his Stead, becauſe not done by the Common Council of the whole Kingdom; and that alſo for ſlight and inſufficient Grounds.

Therefore ſince the Times before the Conqueſt do afford us no more Examples of this kind among the Kings of the *Weſt Saxons* Race; (to which I only confine my ſelf) ſince thoſe Kings being for the moſt Part at Wars with the *Danes* to the Time of *Edward* the Confeſſor, had ſomewhat elſe to think on than the making themſelves Abſolute, or Tyrannizing over their Subjects: But indeed, there is ſcarce to be found in Hiſtory a Succeſſion of more mild, juſt and valiant Princes, than *Egbert* the Firſt King of all *England*, and his Deſcendants.

M. Pray Sir tell me to what Purpoſe you cite theſe Inſtances of the Nobility and People of *England* depoſing and caſting off their Kings in the Times before the Conqueſt; is it that you would juſtify that Common-wealth Principle, that the Parliament hath the like Power to depoſe the King at this Day in Caſe of any

Infringement

Infringement of the Fundamental Laws of the Kingdom, or Breach of the Original Contract (as thoſe of your Party now term it?) If you do, pray ſpeak plain, and then I ſhall know what Anſwer to give you.

F. Tho' I aſſert it, (as undeniable in Matter of Fact,) That the *Engliſh-Saxons* did often exerciſe that Power they had reſerved to themſelves, of Electing and Depoſing their Kings, when they became inſupportable for Tyranny or Miſgovernment; as appears not only in the Kingdom of the *Weſt-Saxons*, I have now inſtanced in, but in almoſt all the other Kingdoms of the Heptarchy; in which there are to be found many more Inſtances of the Depoſitions of their Kings, than what were in the *Weſt-Saxon* Kingdom: And this was then very juſt and neceſſary, ſince theſe Kingdoms were all Elective, and none of them Hereditary; and that the general Meeting of the great Council of the Nation was always at ſet and conſtant Times; and did not depend upon the Will and Pleaſure of the King, either to call or diſſolve them, as I have already proved: And that this Power was no unuſual Thing, I appeal to all the Ancient Kingdoms of *Europe*, founded after the ſame Model as ours, and which I mentioned at our laſt Meeting; ſo that nothing is more frequent in their Hiſtories and Annals, than the Depoſing of their Kings for the above-mentioned Crimes of Tyranny or Miſgovernment. But that ſome of theſe *Gothick* Kingdoms, as *Denmark* and *Sweden*, whilſt they continued Elective, have exerciſed this Power even till of late, is ſo notorious in Matter of Fact, that it needs no Proof, ſince the Kings of thoſe Kingdoms hold their Crowns at this Day by that Title, and on thoſe Conditions which the Nobility and People gave them, after the Depoſition of their Predeceſſors.

But though this were ſo anciently alſo in *England*, it does not therefore follow that it muſt be ſo now; for ſince the Crown of this Kingdom became Hereditary, and that the Calling and Diſſolving of great Councils or Parliaments came to depend wholly upon the King's Will, I muſt allow, that the Caſe is much altered, and that the Two Houſes of Parliament have now no Power to depoſe the King for any Tyranny or Miſgovernment whatſoever. The firſt Parliament of King *Charles* the Second, in the Act for attainting the Regicides, have actually diſclaimed all coercive Power over the King; and yet for all that, the Nobility, and People of *England*, may ſtill have a good and ſufficient Right left them of defending their Lives, Religion, and Liberties againſt the King, or thoſe commiſſioned by him, in caſe of a general and univerſal Breach and Invaſion of the Fundamental Laws of the Kingdom, or Original Contract, (if you will call it ſo), and not to lay down thoſe defenſive Arms, till their ſaid juſt Rights and Liberties are again reſtored, and ſufficiently ſecured to them. So that though I will not bring the Cuſtom of the *Engliſh-Saxons* as a Precedent for the Parliament's Depoſing of the King, yet I think I may make uſe of it thus far, that this Nation has ever exerciſed this neceſſary Right of defending their Liberties and Properties, when invaded by the King or his Miniſters, either by Colour of Law, or open Force. And that this hath been the conſtant Practice from almoſt the Time of your pretended Conqueſt down to later Ages, I think I can make out from ſufficient Authorities, both from Hiſtories and Records.

M. Though your Doctrine is not ſo bad as I expected, yet it is ſtill bad enough; and I never knew this Right of Reſiſtance carried home, but that it always ended in Depoſing and Murdering of the King at the laſt; as we have ſeen in our own Times: But let the conſtant Practice have been as it will, I am ſure ſuch Reſiſtance hath been always condemned by our Ancient Common Law, as well as Modern Statutes, as I ſhall prove farther to you by and by. And therefore pray give me leave to tell you, That the never ſo conſtant Practice of an unlawful Thing, can no more juſtify the doing of it, than that conſtant Uſage, Time out of Mind, for Thieves to rob between *London* and St. *Albans*. Not that I fore-judge you, or refuſe to hear any Inſtances and Authorities from Hiſtories or Records to make good your Aſſertion.

F. I thank you for your Patience: What therefore if I prove that ſuch Reſiſtance has been not only actually exerciſed by the Clergy, Nobility and People in former Ages, but that it hath been alſo allowed by our Kings themſelves, and approved of by great Councils, or Parliaments in thoſe Times, for lawful, and the Actors in it wholly indemnified and ſaved harmleſs; nay, a Power given them, and that by the King himſelf, to reſiſt him, and defend themſelves, in caſe he broke his Charters and Agreements made to and with his Nobility and

People, or else with some Foreign Prince? Which may appear from this remarkable Instance of King *Henry* II. at the End of whose Reign *Hoveden* in his Annals, gives us the Conditions of the Peace made in the last Year of this King, between him and *Philip* King of *France*, with the Consent of their Bishops, Earls, and Barons; where, among other Articles, you will find this for one, particularly relating to the Barons of *England*, who were also to swear to the Peace, in these Terms; *Et omnes Barones Angliæ jurabunt, quod si Rex Angliæ noluerit has Conditiones tenere, quod ipsi tenebunt cum Rege Franciæ, & Comite Richardo, & eos adjuvabunt pro posse contra Regem Angliæ, &c.* Whence we may without doubt conclude, that the Resistance of Subjects in some Cases against their Kings, was then allowed of, even by the King himself, and thought not inconsistent with the Allegiance they bore him, though it might suspend it for a Time.

Parte Poster. p. 3.

M. I confess, this Instance would be of some Weight, were it not for the Critical Time when this Peace was made; *viz.* when *Richard* Earl of *Poictou*, the King's Eldest Son, had rebelled against his Father, and taken Part with the King of *France*; and had drawn over a great many of the *Norman*, and *Pictavian*, and *English* Barons to his Party; which when King *Henry* perceived, this very Author you have quoted here, tells you, *Quod Rex Angliæ in arcto positus Pacem fecit cum Rege Philippo*; that is, was constrained to make Peace with him: So that King *Henry* being in this Streight, the King of *France* and Earl *Richard*, with the Barons of his Party, forced King *Henry* to sign what Conditions they pleased; for there is no such Clause so much as mentioned for the *French* Barons.

But make the most of it, it is but a Temporary Relaxation of Allegiance from King *Henry* to his Barons, and the King might surely thus release them if he pleased: But it is plain, they could not have acted thus, without this Condition had been expresly inserted.

F. Well, supposing King *Henry* to have been never so much constrained to the making of these Conditions; and that it was his own Act that rendred it lawful, it still proves as much as I urge it for; *viz.* That neither the Kings of *France* or *England* then thought this Resistance absolutely unlawful; for then the King's own Act could never have dispensed with it.

But to shew you farther, that the People of this Nation have ever maintained this Right of Resistance, even without the Allowance of our Kings themselves: And for the doing of this, I shall proceed with the earliest Instances of this Kind after the Conquest; *viz.* In the Time of King *Richard* the First, during whose Absence in the *Holy Land*, he had committed the Government of his Kingdom to *William* Bishop of *Ely*, who abused his Power by an arbitrary and insolent Carriage; affronting and oppressing *John* Earl of *Morton*, the King's own Brother, and *Jeffry* Archbishop of *York*, the King's base Brother; whereupon they rose up against him; and having the Bishops, the Earls and Barons of their Side, appointed the said Bishop a Day, to answer to his Crimes in the King's Court, or great Council of the Bishops, Lords, and Tenants *in Capite*, then called *Curia Regis*; where, when he refused to appear, they all with one Consent came to *London*, and fought with the Followers and Adherents of the said Chancellor by the Way. When they came to Town, Earl *John*, with the Archbishops of *York* and *Rouen*, with all the Earls and Barons, together with the Citizens of *London*, met in St. *Paul*'s Church-yard, and there it was proposed, that the said Chancellor should, for his Evil Government, be deposed and banish'd the Kingdom: And so he immediately was, by the general Consent of the Common Council of the Kingdom. So that you see the Nobility Clergy, and People, had then no Notion of an irresistible Power in the King, and those put in Commission by him, when they found their Power to grow Tyrannical and Insupportable.

Vi. R. Hoved. Annal. parte posterior, 399.

M. But if I forget not, you omit one material Circumstance in this Affair, which seems to make against you; which is, That the Archbishop of *Rouen*, and *William* the Earl Mareschal, did, at that Time, produce the King's Letters, signed with his Seal, wherein he had appointed, that they Two should be associated in the Government with the Bishop of *Ely*; and that he should do nothing without their Privity and Consents, and of those associated with him, in the Business of the Kingdom; and that if he offered to do otherwise, he should be deposed. So that it seems what they now acted, was not so much in Opposition to the King's Commission as to the Bishop's, who had refused to obey his Commands.

F. I con-

F. I confeſs it was as you ſet forth; yet this makes nothing againſt my Opinion; ſince it is apparent that Arms were taken, and this Reſiſtance made by the Major Part of the Biſhops, Earls, and Barons, together with the *Londoners*, before ever it was known that ſuch Letters were written by the King. And ſo it ſeems they would have done much the ſame Thing, if there had been no ſuch Letters ſent by the King at all. You may alſo remember, that all theſe Proceedings alſo were approved of, and confirmed by the King himſelf.

But that I may proceed in my Hiſtory of Non-Reſiſtance, I come to the Reign of King *John* his Brother; who when he had refuſed the Archbiſhop of *Canterbury*, and all the Biſhops, Earls, and Barons of the Kingdom, to confirm the great Charter of King *Henry* the Firſt, they, together with the reſt of the great Men and People of the Kingdom, of all Degrees and Conditions, took up Arms, and made a vaſt Army, reſolving never to lay them down, till he had new granted and confirmed the Charters of Liberties and Foreſts; till at laſt the King finding himſelf almoſt quite forſaken, ſo that he had ſcarce Five Knights left about him, he was at laſt forced to meet the ſaid Biſhops, Earls, Barons, and People, at *Run-Mead*, and there to grant them that great Charter, which has been the Subject of ſo much Diſcourſe between us. So that you ſee here that the Church of *England* in thoſe Times (if the Biſhops and Clergy are the Repreſentatives of this Church) had then no Notion of this Doctrine of Paſſive Obedience to the King's Abſolute Will and Commands. *Mat. Paris, A. D. 1215. p. 252. & dein.*

M. I cannot deny the Matter of Fact to be as you ſay; but yet you may remember, that the ſame Author tells us, That the Pope thought the King hardly dealt withal in this Matter; ſo that he gave Audience to the King's Ambaſſadors, concerning the Rebellions and Injuries which the Barons of *England* had committed againſt their King; and that upon a ſolemn Hearing of the whole Buſineſs, and after a Conſultation with his Cardinals, he did, as Supreme Lord of *England*, (after King *John*'s Reſignation of his Crown to him) by his Bull then publiſhed, make void the ſaid great Charters of Liberties and Foreſts; and condemn all the Barons Proceedings, as againſt their Duty and Allegiance to the King their Sovereign Lord: So that it ſeems this was not approved of any where but by the Actors. The Pope thereupon excommunicating the Barons, and ſuſpending the Archbiſhop of *Canterbury* for joining with them. *Ibid. p. 165.*

F. I believe you will make nothing of this Objection: For it appears from the ſame Author, that the Pope had before this excommunicated the King; and as far as lay in his Power, depriv'd him of his Kingdom, and abſolved all his Subjects of their Allegiance: So that it is plain, it was not out of any true Principle, or Hatred of Rebellion and Reſiſtance in Subjects, that the Pope had thus acted; but purely to gratify the King at this Juncture of Time, and to defend him in his Tyranny, and Breach of his own Charters, becauſe he was then become his Vaſſal; and ſo he cared not how much he oppreſſed his Subjects, becauſe he was thereby the more able to pay him the Tribute he had granted for the Kingdoms of *England* and *Ireland*: And he could alſo expect the more ſecurely to extort Money from the whole Kingdom. But that this Bull of the Pope's was contrary to the King's own Expreſs Act and Agreement, appears plainly by that Clauſe which is ſtill to be found in a Charter under the Seal of this King; and which ſeems to have been the Heads of the great Charter, (according to which it was drawn into the Form we now find it in *Matthew Paris*) in which it is expreſsly provided, and granted by the ſaid King, That in caſe he ſhould go about to break or infringe any Clauſe in the ſaid Charter, and ſhall not amend it within the Space of Forty Days, that then, *Illi Barones cum Communia totius Terræ diſtringent & gravabunt nos modis omnibus quibus potuerint, aut (ſcil.) per captionem Caſtrorum, Terrarum, Poſſeſſionum, & aliis modis quibus potuerint, donec fuerit emendatum ſecundum arbitrium eorum, ſalva perſona noſtra & Reginæ noſtræ, & Liberorum noſtrorum, & cum fuerit emendatum intendent nobis ſicut prius fecerunt.* So that you ſee here in the Judgment even of the King himſelf, they might freely reſiſt, and take up Arms againſt him, till he made good every Article of theſe Charters, if violated; and were not to return to their Obedience till it was amended. And the like Clauſe, almoſt Word for Word, is alſo to be found in the Concluſion of the great Charters, publiſhed in *Matthew Paris*. *Ibid. p. 230.* *P. 261.*

M. I grant

M. I grant the Clauſe is there as you quote it; yet I much doubt whether it was of any Validity, being no doubt drawn up by the Barons then in Arms, and which the King durſt not at that time refuſe, and ſo he was indeed under a kind of Dureſs when he did it. And beſides, pray mark the Concluſion of this Clauſe; this Reſiſtance was to be *Salva Perſona noſtra & Reginæ noſtræ, & Liberorum noſtrorum, cum fuerit emendatum, intendent nos ſicut prius fecerunt.* Now how this Security here reſerved for the King's Perſon, could conſiſt with that open War the Barons made afterwards againſt his very Perſon, and caſting off all their Allegiance to their Natural Prince, and calling in Prince *Lewis*, Son to the King of *France*, I cannot underſtand.

F. I think all this may very eaſily be ſolved: For in the Firſt Place, King *John* was no more compelled to agree to this Clauſe, than he was to the Charters themſelves; and if thoſe were lawful and reaſonable, ſo was this Reſiſtance too; ſince there was no other Way or Means left to preſerve them, in caſe the King ſhould go from his own Acts, and break through all he had done; ſo that if the Ends were lawful, the Means to preſerve it muſt be ſo too; or elſe thoſe Charters would have ſignified nothing, any longer than the King pleaſed. As for the other Part of the Objection, that this Reſiſtance was ſtill to be, ſaving the Perſon of the King and Queen, *&c.* and that this did not conſiſt with the Barons after making War againſt his Perſon, and caſting of all Allegiance to him: It was not their Faults, but the King's, if they could not perform this Agreement; ſince the King, by making War upon the Clergy, Nobility, and People, by his open and notorious Breach and recalling of theſe Charters, calling in Strangers to his Aſſiſtance, and declaring he would no longer govern according to Law, had made it abſolutely unpracticable to preſerve their Allegiance to him any longer; ſo that they never caſt off their Duty as Subjects, till he had caſt off his Duty as a King; and then what was there elſe left to be done, but to provide for their own Safety, by calling in a Foreign Prince to their Aſſiſtance as ſoon as they could? Since there was no other way left them to defend themſelves againſt thoſe Troops of Strangers the King had invited over: And though many of them, with their Captain *Hugh de Boves*, had been caſt away, and drowned in a Tempeſt at Sea, yet more were daily expected. So that if Tyrants ſhould ſuffer nothing for the Breach of their own Charters and Oaths, they would be in a better Condition by their Violation, than the obſerving of them; for by the making them, they for the preſent quiet the Minds of their diſcontented Subjects, and when they pleaſe may break them all again, when they have got Power, if no body muſt preſume to reſiſt them, or not think them as much Kings when they deſtroy and oppreſs their People, as when they protect and preſerve them, by governing according to the Laws of the Kingdom. But pray what have you to ſay againſt that general Reſiſtance that was made by almoſt all the Biſhops, Barons, and great Men of *England*, againſt his Son *Henry* the Third, and about the frequent and notorious Violations of the great Charters which his Father and himſelf had ſo often ſworn to, and confirmed, and for which he had received ſuch great Benevolences and Subſidies from the Nation?

M. Before I anſwer this Queſtion, pray take Notice that I am not at all ſatisfied with your Arguments; That whenever Subjects ſhall think themſelves injured, and oppreſſed by their Sovereigns, that then they may caſt off their Allegiance to them, if they cannot have the Remedy they deſire; ſince this were to make them both Judges and Parties too in their own Cauſe; which is altogether unjuſt and unreaſonable between private Men, much more between Kings and Subjects. But paſſing by this at preſent, I ſhall tell you my Opinion of this Reſiſtance of *Simon Montfort*, and the Earls, and Barons, his Adherents, that it was downright Rebellion, and tended only to Dethrone the King, and make him a meer Cypher, and to devolve the whole Government upon themſelves; as appears by the *Oxford* Proviſions recited by ſo many Authors of that Age; and which were afterwards condemned, (and conſequently thoſe violent Means by which they were obtained) by *Lewis* the Ninth, King of *France*; who in an Aſſembly of his Eſtates, upon a ſolemn Hearing of the whole Difference between King *Henry* III. and his Barons, declared theſe *Oxford* Proviſions null and void. So far was this good and pious King from countenancing any Rebellion (or Reſiſtance, as you term it) of Subjects againſt their Lawful Sovereign.

F. For all this, I cannot find that the King of *France* did then at all condemn this Defence the Earls and Barons had before made of the Liberties granted them by the great Charters; for though he reſtored the King to his former Power, by avoiding the *Oxford* Proviſions; yet at the ſame Time when this was done, (as the Continuator of *Mat. Paris* tells us) he expreſly excepted the Ancient Charters of King *John*, *Univerſati* (*ſcil. Angliæ*] *conceſſæ*, and from which *per illam ſententiam in nullo intendebat penitus derogare*; and if he did not in the leaſt intend to derogate from them, he could not with any Juſtice condemn the only Means the Barons had to maintain them; after ſo many Trials, and freſh Promiſes and Oaths of this fickle inconſtant King, all broken and laid aſide. So that you may as well or better alledge the Pope's ſhameful Abſolution of this King from this Oath he had made to obſerve the great Charters, as an Argument why they ſhould not be any longer bound by them, nor the Barons obliged to defend them; as this Sentence of the King of *France*, to render the Reſiſtance the Barons had made in Defence of the great Charters to be unlawful. And that King *Henry* himſelf did afterwards allow this Reſiſtance for good and lawful, pray ſee the Agreement which was not long after made in full Parliament, in the 49th, between the King, the Prince, and all the Prelates, Earls and Barons of *England*; whereby he obliged himſelf to obſerve all the Articles and Ordinances which had been before agreed upon at *London* in the 48th Year of his Reign. And then follows this Clauſe in the Record (which the Doctor himſelf has Printed in his *Appendix* at the End of the Firſt Volume of his Introduction to *Engliſh* Hiſtory) which I ſhall here tranſlate out of *French*, becauſe it is very old and obſcure; it is thus: "And if our Lord "the King, or Monſieur *Edward*, (*viz.* the Prince) ſhall go againſt the Peace "and Ordinance aforeſaid; or ſhall grieve the Earls of *Leiceſter*, or *Glouceſter*, or "any of their Party, by Reaſon of any of the Things aforeſaid; that then the "great Men, and Commons of the Land, (in *French*, *hauz Homes*, *& Comun de la "Terre*) ſhall riſe againſt them to grieve them to the utmoſt of their Power, and "ſhall be obedient to them in nothing, and in doing all Things as if they were "bound to them in nothing, until theſe Things ſhall be amended and maintained "according to the Ordinance of the Peace aforeſaid. And to this our Lord the "King, Monſieur *Edward*, and the great Men of the Kingdom, have ſworn upon "the Holy Goſpels, to keep and maintain the Things aforeſaid. And with this Record agrees this King's *Latin* Charter, much to the ſame Purpoſe recited in the *Annals* of *Waverly*, *Anno* 1264, only the Words there are more general, That if the King or Prince ſhould break the ſaid Peace, by hurting or falling upon any of the ſaid Earls of *Leiceſter*, or *Glouceſter*, or any of the Perſons above-mentioned, *Liceat omnibus de Regno noſtro contra nos inſurgere, & ad gravamen noſtrum, opem & operam dare juxta poſſe, ad quod ex preſenti præcepto noſtro omnes & ſingulos volumus obligari, fideliter & homagio nobis facto non obſtante.* So that you ſee here, that by the Judgment of the King himſelf, and the whole Parliament, this Reſiſtance might be exerciſed, notwithſtanding the Homage they had done him. And this is that Form of the Peace which I have before cited to you to have been made, (as appears by a Writ to the Sheriff of *Yorkſhire*, to be ſeen upon the ſame Roll, and in the ſame Membrane) *unanimi conſenſu & voluntate noſtra, & Edwardi filij noſtri Primogeniti, Prælatorum, Comitum, Baronum, & Communitatis Regni noſtri*, &c. Which Clauſe Dr. *Brady* thought fit to conceal, and not Publiſh with the former Record, becauſe the Word *Communitas* did not at all ſuit with his Notions in this Place.

Page 992. Rot. Pat. 49 H. 3. M. 5. Page 217. Rot. Clauſ. 49 H. 3. M. 5.

M. I muſt confeſs this ſo ſolemn an Agreement upon the Record would have been very conſiderable, had it been made whilſt the King and Prince had been free, and in their own Power; whereas the Doctor has made it plainly appear, that the King and Prince were at this Time in the Power of *Simon Montfort* and his Adherents, who called that famous Parliament of the 49th, to which we ſuppoſe the Commons were firſt ſummoned; and therefore the Prince was not delivered at this Time (any more than the King his Father) out of their Power; and was only taken out of *Dover* Caſtle, and made a Priſoner at large under a Guard (as his Father was) until he made his Eſcape from his Keepers at *Hereford* Caſtle. So that I do not at all value this Agreement, becauſe made by Dureſs; though I confeſs the Words of the Records are expreſs, that it was *de unanimi conſenſu & voluntate noſtra*, &c. *Edwardi Filij noſtri.* But it appears plainly, that by this

R. A. P. 135. & dein. Ibid. 143.

Agreement

Agreement the King had discharged himself of all Royal Power, and confirmed an Instrument, whereby the whole Government of the Kingdom, and Nomination of all the great Officers of the Crown was put into the Hands of Nine Earls and Barons.

F. At this rate, no Act that a King can do when he hath the worst of it, though confirm'd by a Solemn Oath (as this was upon the Holy Gospels) can ever be binding; for it is but alledging that it was done by Duress, and it is sufficient to render it null and void. But be it as it will, this was certainly the general Consent, Act and Declaration of the whole Nation assembled in Parliament, and that owned by the King himself, and his Son the Prince, and all his Party. And farther, that this Resistance of the Earl of *Glouceſter* (who was one of these Barons) was not after counted for Treason, or Rebellion, appears by that Pardon of the said Earl which we have before cited "to have been made "by this King, with Assent of the King of *Almaine* (his Brother) and the "Counts and Barons, and Commons of the Land, in which he pardoned the "said Earl, and all his Company, (and also all the *Londoners*) all Rancor "and Ill-will; and in the same manner as the King quits and discharges "the Earl, and his Company, so does the said Earl hereby for himself, and all "his Company, remit to all those that were of the Party of the King, "any Thing done since that Moment (that is, that Civil War, in which the Earl of *Glouceſter* had so great a Share.) So that you see this Resistance of the Earl of *Glouceſter* was within Two Years after the Battel of *Eveſham* so far from being looked upon as Rebellion, that the Pardon is made mutual, not only for the Earl, and those that followed him, but also for those that had taken the King's Part.

Rot. Pat. 51 *H.* 3. *M.* 161.

But I shall come now to his Son, and Successor, King *Edward* the First; where we shall find this Doctrine of Resistance asserted more than once, not only by private Men, but by the whole Parliament; as appears by those Letters that were written by the King's Command, (or Permission at least, in the 29th of his Reign) in the Name of all the Earls, Barons, *& tota Communitas Angliæ*, to Pope *Boniface* the Eighth, in Vindication of the King's Superiority over *Scotland*; in which you will find this remarkable Passage, *Nec etiam permittimus, nec permittemus, ſicut non poſſumus nec debemus præmiſſa tam inſolita, indebita, & præjudicialia, & alias inaudita, prælibatum Dominum noſtrum Regem, etiam ſi vellet facere, modo quolibet attemptare.* Which Restraint of the King's Will must certainly mean somewhat more than a bare Remonstrance or Declaration against it; since we have seen in our own Times, Kings make nothing of meer verbal Declarations of the Two Houses of Parliament, if they had a mind to do a Thing they thought belonged to their Prerogative, though the Parliament declared against it. And to let you farther see that this Doctrine was at this Time generally believed, and practised all over *Europe*, you will find almost the same Clause in the Letters which were written in the Reign of *Philip* the Fair, King of *France*, *Anno* 1203, (which falls about the 30th of our King *Edward* the First) and were sent to the same Pope *Boniface*, upon Occasion of the like Usurpations upon the Church of *France*, in the Name of the whole Clergy of that Kingdom; whereby it not only appears that this was done in a general Assembly of Estates, *viz.* of the Clergy, Barons, *&c. & Communitates Villarum*; but they also there declared, *expreſſimus, viva voce, Quod ſi præfatus Dominus Rex (quod abſit) tolerare, vel diſſimulare vellet, Ipſi* (scil. Episcopi, & Barones, *&c.*) *nullatenus ſuſtinerent.* So that here you see not only the Temporal Estates, but the very Clergy declare, that they would by no means suffer the King to act thus (no not) if he would.

Vide Mat. Weſtminſter, Anno 1301. p. 436.

Pryn's *Second Vol. of Pap. Uſurpations*, p. 954.

But the Barons and People of *England*, did actually put this Doctrine in Execution, some few Years before this Letter I now mentioned was writ to the Pope; which Transaction I shall give you almost *verbatim* out of *Mat.* of *Weſtminſter*, and *Henry de Knighton*, in *Anno* 1297, (being the 26th of *Edward* the First) when the King having extorted a great Sum of Money from the Clergy and People, contrary to Law, and being then going into *Flanders*, he called a Parliament at *Weſtminſter*, where most of the Earls and Barons refused to appear, until such Time as their Petitions for the Ease of their Country were heard; and that the King would again confirm *Magna Charta*. Yet nevertheless the

King

King upon Conceſſion of his Male Adminiſtration, which he made before all the People, with Tears in his Eyes, and Promiſe of Amendment, then obtained of the Commons an Aid of the Eighth Penny of their Goods. But as ſoon as the King was gone over, the Conſtable and Earl Mareſchal, with other Earls and Barons, went to the *Exchequer*, and there forbad the Judges to levy the ſaid Tax upon the People by the Sheriffs, becauſe it was done without their Knowledge, without whoſe Conſent no Tax ought to be exacted, or impoſed. So that the ſaid Earls and Barons being thus gathered together, and the greater Part of the People joining with them; at laſt Prince *Edward*, then Lieutenant of the Kingdom, was forced to call a Parliament; to which the Earls and Barons came attended with great Multitudes, both of Horſe and Foot, but would not enter the City of *London*, till the Prince had in his Father's Name confirmed the great Charters, and had paſſed the Statute *de Tallagio non concedendo*; both which were afterwards again confirmed by the King his Father ſome Time after his Return.

And this will ſerve to explain the laſt Article in this Statute, "Which compre-
"hends the King's Pardon or Remiſſion to *Humphrey* Earl of *Hereford* and *Eſſex*,
"then Conſtable, and *Roger Bigot*, Earl of *Norfolk*, Mareſchal of *England*, (the
"Two principal Leaders in the late Reſiſtance,) with all other Earls, Barons,
"Knights, and Eſquires, of their Party; all Leagues and Confederacies, as alſo
"all Rancor and Ill-will, with all other Tranſgreſſions againſt them, *&c.* And pray ſee Sir *Edward Coke*'s Comment on theſe Words; "If you compare our *2d Inſtit.* t.
"*Engliſh* Hiſtories with this Act of Parliament, the Old Saying ſhall be verified, p. 536.
"*That Records of Parliament are the trueſt Hiſtories.* The King had conceived a
"deep Diſpleaſure againſt the Conſtable, Mareſchal, and others of the Nobility,
"Gentry, and Commons of the Realm, for denying that which he ſo much de-
"ſired; yet for that they ſtood in Defence of their Laws, Liberties, and Free
"Cuſtoms, *&c.* (I ſuppoſe he refers to the Reſiſtance but now mentioned)
"whereupon he did not only reſtore the ſame to them, as aforeſaid, but granted
"ſpecial Pardon to thoſe againſt whom he had conceived ſo heavy a Diſplea-
"ſure, *&c.* and ſuch a one as you will ſcarce read the like. And after a ſhort Gloſs upon the Words Rancor and Ill-will, he thus comments on theſe Words, *etiam tranſgreſſiones ſi quas fecerint:* Here the Words, *ſi quas fecerint*, were added, leſt by Acceptance of a Pardon, they ſhould confeſs they had tranſgreſſed. So careful were the Lords and Commons to preſerve their Ancient Laws, Liberties and Cuſtoms of their Country. So that it is plain, that Sir *Edward Coke* then thought the Lords and Commons had not tranſgreſſed, in thus ſtanding up, though with Force of Arms, for their juſt Rights and Liberties; and which ſufficiently proves that this Author did not conceive ſuch a Reſiſtance to be making War againſt the King, and ſo Treaſon at that Time at Common-Law, and conſequently not to be afterwards Treaſon by the Statute of the 25th of *Edward* the Third (as you would have it); ſince that Statute does not make any other Overt-Acts to be Treaſon, but what had been ſo by Common-Law before this Statute was made.

But in the Reign of this King's Son, *Edward* the Second, there were much more pregnant and fatal Proofs of the Exerciſe of this Right of Reſiſtance by the Earls, Barons, and People of *England*, againſt *Pierce Gaveſton*; whom having *H. Knyghton, Imag. Hiſt.* been before for his Miſgovernment of the King, baniſh'd the Realm by Act of Parliament, and coming over with the King's Licenſe, but without any Reverſe of the ſaid Act; *Thomas* Earl of *Lancaſter*, the King's Uncle, with the reſt of the Earls, Barons, and Commons of the Land, took up Arms againſt him. And tho' he raiſed ſome Forces by the King's Commiſſion, yet they fought with him, and took him Priſoner, and beheaded him near *Warwick*. Some Years after which, the ſaid *Thomas* Earl of *Lancaſter*, with *Humphrey de Bohun*, Earl of *Hereford*, together with divers other Earls and Barons, took Arms, and ſpoiling the Lands of the Two *Spencers*, Father and Son, came up to *London*, where the King had called a Parliament; in which the King was forced to baniſh the ſaid *Spencers* out of the Kingdom, though they quickly returned again: Againſt whom, when the ſaid Earls above-mentioned, and divers other Barons and Knights, again took Arms; but being fail'd by ſome of their Confederates, were overpowered by the King's Party, and the Earl being taken Priſoner, was Attainted, and Beheaded at *Pontfract*; yet was this Judgment againſt the Earl, and thoſe of his Party, after-

wards reverſed in Parliament, in 1*mo. Edward* III. and their Heirs reſtored in Blood, as alſo to the Lands of their Fathers; as beſides the Act, it ſtill is to be ſeen upon the Rolls, appears more plainly by a Writ of this King's reciting; "That "whereas at a Parliament at *Weſtminſter*, among other Things, it was agreed by
Rot. Clauſ. 1 *E.* 3. p. 2. "the King, the Prelates, Earls, Barons, and Commons of the Kingdom, that all "thoſe who were in the Quarrel with *Thomas* Earl of *Lancaſter*, againſt the "*Spencers*, ſhould have their Lands and Goods reſtored, becauſe the ſaid Quarrel "was found, and adjudged by the King, and the whole Parliament, to be good "and juſt; and that the Judgments given againſt them were null and void, and "therefore commands Reſtitution of the Lands and Tenements now in the Crown, "to the Executors of the ſaid Earl. And the like Writs are found for the other Lords and Gentlemen that had been of his Party.

And further, that not only this Reſiſtance made by this Earl, and the reſt of his Followers, but alſo that which this King himſelf made together with Queen *Iſabel*, his Mother, againſt the Miſgovernment of the King his Father, through the Evil Counſel of the Two *Spencers*, appears by the Act of Indemnity paſſed in the Firſt Year of this King; in the Preamble of which there is recited a ſhort Hiſtory of the wicked Government, and Baniſhment of the *Spencers*, Father and Son; "and alſo how *Thomas*, late Earl of *Lancaſter*, was by their Procurement purſued, "taken, executed, diſinherited; and how the ſaid *Spencers*, and *Robert Baldock*, "and *Edmund*, Earl of *Arundel*, by the Royal Power they had uſurped, had "cauſed the King that now is, and the Queen his Mother, to be utterly forſaken "of the King his Father, and to be Exiled from the Realm of *England*; and that "therefore the King that now is, and the Queen his Mother, being in ſo great "Jeopardy in a ſtrange Country, and ſeeing the Deſtructions, and Diſinheriſons "which were notoriouſly done in *England*, upon Holy Church, the Prelates, Earls, "Barons, and the Commonalty of the ſame, by the ſaid *Spencers*, *Robert Baldock*, "and *Edmund* Earl of *Arundel*, by the Encroachment of Royal Power to themſelves: "And ſeeing they might not remedy the ſame, unleſs they came into *England* with "an Army of Men of War, and have by the Grace of God with ſuch Puiſſance, "and the help of the great Men and Commons of the Realm vanquiſhed and de-"ſtroyed the ſaid *Spencers*, &c. Therefore our Sovereign Lord the King, by the "Common Council of the Prelates, Earls, Barons, and other great Men, and of "the Commons of the Realm, have provided, and ordained, *&c.* as follows. That "no great Man, nor other of what Eſtate, Dignity or Condition ſoever he be, that "came in with the ſaid King that now is, and with the Queen in Aid of them, "to purſue their ſaid Enemies; and in which Purſuit the King his Father was "taken and put in *Ward*, &c. ſhall be impeached, moleſted or grieved in Perſon, "or in Goods, in any of the King's Courts, *&c.* for the Purſuit, and taking in Hold "the Body of the ſaid King *Edward*, nor for the Purſuit of any other Perſons, nor "taking their Goods, nor for the Death of any Man, nor any other Things perpe-"trated, or committed in the ſaid Purſuit, from the Day of the King and Queen's "Arrival, until the Day of the Coronation of the ſaid King.

The Act of Indemnity is ſo full a Juſtification of the Neceſſity and Lawfulneſs of the Reſiſtance that was then made againſt King *Edward* II. and his wicked Counſellors the *Spencers*, that it needs no Comment. And tho' King *Edward* III. took Warning by the Example of his Father, and was too wiſe then to follow the like Arbitrary Courſes; yet *Richard* II. his Grandſon, being a wilful raſh young Prince, fell into all the Errors of his great Grandfather, and found the like, if not greater Reſiſtance, from his Nobility and People: For when he had highly miſ-governed the Realm by the Advice of his Favourites, *Alexander* Archbiſhop of *York*, the Duke of *Ireland*, and others; a Parliament being called in the 10th Year of his Reign, the Government of the Kingdom was taken out of their Hands, and committed to the Biſhops of *Canterbury* and *Ely*, with *Thomas* Duke of *Glouceſter*, the King's Uncle, *Richard* Earl of *Arundel*, and *Thomas* Earl of *Warwick*, and Nine or Ten other Lords and Biſhops; but notwithſtanding this, the King being newly of Age, refuſed to be governed by the ſaid Duke, and Earls, but was carried about the Kingdom by the ſaid Duke of *Ireland*, and others, to try what Forces they could raiſe, and alſo to hinder the ſaid Duke and Earls from having any Acceſs to him. But ſee what followed theſe violent and arbitrary Courſes, as it is related by
Col. 2697. *Henry de Knighton*, who lived and wrote in that very Time, and is more exact in this King's Reign than any other Hiſtorian; he there tells us, that when *Thomas*

Duke

" Duke of *Gloceſter*, and the other Biſhops and Earls now mentioned, found they " could not proceed in the Government of the King and Kingdom, according to " the Ordinance of the preceeding Parliament, through the Hindrance of *Michael* " *de la Poole*, *Robert de Vere*, Duke of *Ireland*, *Nicholas Brembar*, and *Robert Tre-* " *ſillian* Chief Juſtice, and others, who had ſeduced the King, and made him alie- " nate himſelf from the Council of the ſaid Lords, to the great Damage of the " Kingdom". Whereupon the ſaid Duke of *Gloceſter*, and the Lords aforeſaid, with a great Guard of Knights, Eſquires, and Archers, came up towards *London*, and quartered in the Villages adjacent; And then the Archbiſhop of *Canterbury*, the Lord *Lovet*, the Lord *Cobham*, the Lord *Eures*, with others, went to the King in the Name of the Duke and Earls, and demanded all the Perſons above-mentioned to be baniſhed as Seducers and Traitors to the King: And all the Lords then ſwore upon the Croſs of the ſaid Archbiſhop, not to deſiſt till they had obtained what they came for. The Concluſion of this Meeting was, That the King not being able to withſtand them, was forced immediately to call that remarkable Parliament of the 11th Year of his Reign, in which *Michael de la Poole* and the Duke of *Ireland* were attainted, and *Treſilian*, and divers other Judges, ſentenced to be hanged at *Tyburn*, upon the Impeachment of the ſaid Duke of *Gloceſter*, and the Earl of *Arundel*, for delivering their Opinions contrary to Law, and the Articles the King had not long before propoſed to them at *Nottingham*. *Ibid.* 2700.

I ſhall omit the Reſiſtance, which *Henry* Duke of *Lancaſter* made after his Arrival, by the Aſſiſtance of the Nobility and People of the *North* of *England*, againſt the Arbitrary Government of this King, being then in *Ireland*; not only becauſe it is notoriouſly known, but becauſe it was carried on farther than perhaps it needed to have been, and ended in the Depoſition of this King. Only in the firſt Year of *Henry* the IVth, there was the ſame Act of Indemnity almoſt word for word, paſſed for all thoſe that had come over with that King, and had aſſiſted him againſt *Richard* the Second, and his evil Counſellors, as was paſſed before *in primo* of *Edward* the Third. I ſhall not alſo inſiſt upon the Reſiſtance of *Richard* Duke of *York*, in the Reign of King *Henry* the VIth, who took up Arms againſt the Evil Government of the Queen, and her Minion the Duke of *Suffolk*; becauſe you may ſay, that this was juſtifiable by the Duke of *York*, as Right Heir of the Crown: Nor will I inſtance in the Reſiſtance made by the Two Houſes of Parliament, during the late Civil Wars, in the Time of King *Charles* the Firſt, ſince it is diſputed to this Day, who was in the Fault, and began this Civil War, whether the King or the Parliament: Only thus much I cannot omit to take notice of, That the King in none of his Declarations ever denied but that the People had a Right to reſiſt him, in caſe he made War upon them, or had introduced Arbitrary Government; and expreſsly owns in his Anſwer to one of the Parliament's Meſſages, that they had a ſufficient Power to reſtrain Tyranny, but denied himſelf to be guilty of it: And ſtill aſſerted, That he took up Arms in Defence of his juſt Right and Prerogative, to the Command of the *Militia* of the Kingdom, which they went about to take from him by Force.

M. I have with the greater Patience hearkened to your Hiſtory of Reſiſtance in all the Kings Reigns you have mentioned, becauſe I cannot deſire any better Argument to prove the Unlawfulneſs of ſuch Reſiſtance, than thoſe Acts of Pardon and Indemnity which you muſt own have ſtill followed it even when the Barons proved moſt fortunate; as in that of *Henry* the Third, to the Earl of *Gloceſter*, and thoſe of his Party; and that of *Edward* the Firſt, to the Conſtable and Mareſchal, and their Followers: Nay, after the former Kings had been unjuſtly depoſed, we ſtill find the Actors and Complices of ſuch wicked Actions, did not think themſelves ſafe till they had an Act of Indemnity paſſed to them, of all the Robberies and Murders they had committed in the War; as your ſelf have recited in the Two Acts of Parliament, in the Reigns of *Edward* the Third, and *Henry* the Fourth. Now if theſe Reſiſtances had not been downright Rebellions in the Eye of the Law, to what Purpoſe were theſe Acts of Indemnity paſſed, ſince no Man needs a Pardon, but rather merits a Reward for defending the Government eſtabliſh'd according to Law?

F. In Anſwer to this Objection (for which I am already prepared, ſince I foreſaw you might make it) pray give me leave to ask you, Whether you can

find the Words Treaſon, Rebellion, Robbery, or Murder, in any of theſe Acts of Pardon? And if you cannot, Whether you think Treaſon or Murder, could be pardon'd by general Words or not? And the Reaſon why I ask this Queſtion, is, becauſe if they could not, then the Conſequence will be, That none of theſe Parliaments ſuppoſed that the Reſiſtance that had been made, or all the other Acts performed in Purſuance of ſuch Reſiſtance, were looked upon by thoſe that had done them, no not by the Parliament it ſelf, to be Treaſon, Rebellion, or Murder; ſince certainly thoſe that were Actors in ſuch Reſiſtances, and taking up of Arms, having the Power in their Hands, would not have fail'd to have had thoſe Words inſerted into thoſe Acts of Indemnity, if they had ſuppoſed themſelves guilty of thoſe Crimes.

M. I cannot ſay that the Words Treaſon, and Rebellion, or Murder, are expreſsly mentioned in theſe Statutes, ſince even the Actors in them did not think it for their Credits, to own themſelves to have been guilty of any ſuch Crimes; yet all the particular Words and Expreſſions in theſe Acts amount to the very ſame Thing; for the taking up Arms with one that is not King, againſt him that is, and the actually ſeizing upon his Perſon, and keeping him in hold, was Treaſon at Common-Law, before the Statute of the 25th of *Edward* the Third: And is not taking Men's Goods by Force, and deſtroying their Perſons in Time of Peace, Rebellion and Murder at Common Law? So that if theſe were the Facts they had been guilty of, and if theſe Acts were Treaſon, Rebellion, Robbery, and Murder; then certainly all Treaſons, Rebellions, Robberies, and Murders, are likewiſe pardoned by thoſe Statutes. And though 'tis true, the Law is now, That no Pardon of Treaſon or Murder ſhall be good, unleſs thoſe Offences are particularly named: Yet this was ſo ordained by the Statute of the 13th of *Richard* the Second, by which it is particularly provided, That no Pardon ſhall be allowed before any Juſtice for the Death of a Man, *&c.* Treaſon, *&c.* unleſs the ſame Murder, Treaſon, *&c.* be ſpecified in the ſaid Charter; before which Statute Sir *Edward Coke*, in his Second *Inſtit.* tells us, That by the Pardon of all Felonies, Treaſon was pardoned, and ſo was Murder alſo.

Stat. 2. Ch. 1.

P. 236.

F. I cannot deny but that theſe Facts you mention were Treaſon, in Strictneſs of Law, before the making that Statute; yet does it not follow, that even theſe may be in ſome Caſes juſtifiable (as well as binding a King, when he is out of his Wits) if the publick Peace of the Kingdom, and Preſervation of the Government, according to the Fundamental Laws of the Kingdom, require it. Thus for Example; Suppoſe King *John*, after he had made actual War upon his Barons and People, had happened to have his Forces routed in the Field, can any one believe that it had been unlawful for them to have ſecured his Perſon to prevent his making a new War upon them? And yet this by the Letter of the Law had been Treaſon. Now there are many Actions, which in Strictneſs of Law are Treaſon, yet being for the publick Defence and Security of the Nation, deſerve a Pardon of Courſe. Thus, if Foreign Enemies ſhould Land in *England*, and a Neighbouring Nobleman or Gentleman, who has no Command over the *Militia* of the Countrey, ſhould raiſe on the ſudden, ſuch a Force of his Tenants and Neighbours, as were ſufficient to make a Head againſt them, till the *Militia* of the Countrey could come in to their Aſſiſtance; though this taking up of Arms, without an Expreſs Commiſſion for it, be a high Miſdemeanor; (nay, Treaſon, according to your Principles) yet I ſuppoſe you will not deny, but that the Perſons engaged in it, do not only deſerve Pardon, but Thanks for their Courage, and ſo ſpeedy a Defence of the Nation. And I remember I have read a famous Inſtance of this Kind, that when the Traytors concerned in the Powder-Plot found themſelves diſcovered, they fled into *Warwickſhire*, and thence into *Worceſterſhire*, and were purſued and taken by the High-Sheriff of that County in *Staffordſhire*; which though a great Miſdemeanor, ſince no Sheriff can juſtify carrying the *Poſſe Comitatus* out of the County; yet this was ſo well taken, that King *James* the Firſt rewarded him, and (as I take it) Knighted him for his Pains.

But to apply this to the Matter in Diſpute; though it is true, taking and impriſoning the King's Perſon is Treaſon in the Eye of the Law, yet (as in the Caſe of *Edward* the Second) if the Government could not be reſtored to its priſtine State without that Extremity, it muſt, and will ever deſerve a Pardon: And therefore you ſee the Parliament in the Firſt of *Edward* the Third, not only pardons,

dons, but juſtifies the doing of it, becauſe done for that End. So likewiſe the Statute of the 11th of *Richard* the IId. Chap. 1. not only indemnifies, but "juſti-" fies the Duke of *Gloceſter*, the Earls, Lords, and all others of his Party, for " taking up Arms againſt the Perſons above-mentioned, tho' maintain'd and back'd " by the King himſelf, as being done for the Weal and Safeguard of the King, " the Maintenance of the Crown, and Salvation of the Realm. So much for the Point of making War againſt the King, and impriſoning his Perſon. So that if taking up Arms for the Safeguard of the King, and Salvation of the Kingdom, were juſt and neceſſary to be done, the Conſequences of it, *viz.* the taking of Mens Goods, and killing of thoſe that reſiſt them, cannot be Robbery or Murder, becauſe done in a State of War; which can never be carried on without ſuch Acts of Hoſtility. And therefore you ſee in the Act of Pardon to the Earl of *Gloceſter*, and to the *Londoners*, granted in Parliament of the 51ſt of *Henry* the IIId. (which I have now cited) thoſe that took part with the King are as expreſsly pardoned, as thoſe that were with the Earl; and in the like Pardon to the Conſtable and Mareſchal, in the Time of *Edward* the Iſt. (which I now alſo quoted) thoſe Lords would not own they had tranſgreſſed; but the Words are only, *Etiam tranſgreſſiones ſi quas fecerit.* So that ſince ſuch Reformations could not be brought about without Violence and Bloodſhed, and ſome Irregularities, which in Times of Peace could not be juſtified by the ſtrict Letter of the Law; it was but Reaſon, that for the quieting of Mens Minds, and their future Security, they ſhould be indemnified for what they had done with ſo good an Intent, and for the Common Good of the Kingdom. But that ſuch Acts of Pardon do not relate to the Titles ſuch Kings had to the Crown, but only to their being Kings in the Eye of the Law, appears by a like Act of Pardon paſſed in Parliament in the Firſt of *Henry* the VIIth. to pardon and ſave harmleſs all thoſe that came over with the King, and all that helped him to recover his juſt Right to the Kingdom againſt King *Richard* the IIId. there called, *that Uſurper.* So that you may ſee, ſuch Acts of Pardons do not concern the juſt Titles of Princes, nor the Juſtice of the War, but are to quiet Mens Minds under the New Government; whereas thoſe that took part with the Uſurper, were not pardoned, but left to the Law; ſince the preſent Government would not take care for their Security, that had obſtructed its Settlement. So the Act of Oblivion of the 2d of *Charles* the IId. though it pardons Treaſons expreſsly, yet it as well pardons the Treaſons of them that had Commiſſions from King *Charles* the Iſt. or IId. as well as thoſe that acted by Commiſſions from other pretended Authorities. So that you ſee, in the Judgment of this ſo modern a Parliament, Men might be ſuppoſed to be guilty of Treaſon, tho' they had taken part with the King, and had acted by his Commiſſion, if the Things commanded were illegal.

M. I confeſs, you have taken a great deal of Pains, to juſtify taking up Arms againſt, nay, Impriſonment of our Kings, when that which you call the Preſervation of the Government requires it; that is, when there is a Faction in the Kingdom ſtrong enough to make a Diſturbance. For it was very well ſaid by *Tacitus*, in the Speech he makes for *Otho* to the Soldiers to take up Arms, and kill *Galba*, then Emperor; That it was in vain to ſpeak more for the Juſtification of that Action, *quod laudari non poteſt niſi peractum.* Treaſons, if ſucceſsful, have never wanted a ſufficient Party in the Nation to make up a Parliament to countenance them, and to pardon, nay, juſtify all thoſe that have been Actors in them; as we may ſee by thoſe Acts of Indemnity you mention: And therefore I am not the more convinced, that ſuch Reſiſtance was lawful, notwithſtanding thoſe ſpecious Declarations of Parliament, of their being made for the Publick Good, and Preſervation of the King and Kingdom.

But you have done very warily to paſs by, without any Juſtification, the Depoſition of King *Edward* the IId. as alſo that of the Reſiſtance (as you call it) of *Henry* Duke of *Lancaſter* againſt King *Richard* the IId. as alſo his Depoſition, tho' done in Parliament; ſince all the Proceedings againſt this King were repeal'd in Parliament, in the 1. of *Edward* the IVth, as appears by the Parliament Rolls of that King's Reign; wherein the taking up Arms againſt King *Richard* by *Henry* Earl of *Derby*, is ſaid to be done contrary to his Faith and Allegiance; and his taking the Crown, called Uſurpation; and the killing of King *Richard* his Sovereign Lord, termed (as it juſtly deſerved) Murder and Tyranny, which does (tho' not directly, yet) by Conſequence condemn his Depoſition too, ſince he is after that

Rot. Par'. 1 *Ed.* 4. *m.* 9. *&c.*

that here called King. And you do as warily pass by the late Rebellious War of the Long Parliament against King *Charles* the Ist. as also his horrid Murder before his own Gates; because you know very well, that this Doctrine of Resistance seldom stops with a bare Reformation of what is amiss; but commonly ends with the Murder or Deposition of the King, or else driving him from his Throne; as we now find it by woful Experience in the Person of our Unfortunate King, who was so lately forced to quit this Kingdom for the Security of his Person: And therefore, to put an end to this Part of the Dispute, the Parliament of the 13th of King *Charles* the IId. were so sensible of the great Mischiefs that attended this Rebellious Doctrine, as having been the Destruction of one of the best Princes that ever reigned, and the Occasion of the Loss of so many brave Men, besides the Ruin of so many great and Noble Families, that they were resolved to do their utmost to prevent it for the future; and therefore the King and Parliament, in the 13th and 14th of King *Charles* the IId. passed those remarkable Acts concerning the Settlement of the *Militia* in the King and his Successors, to take away all Dispute about it, though they declare it to have been his Ancient Right: And therefore, to take away all Pretence for taking up Arms either by the Two Houses of Parliament, or any other Person whatsoever; they, in Preamble to both these, that these Acts thus expressly declare, "Forasmuch
13 *Car.* 2. *Chap.* 6. "as within all his Majesty's Realms and Dominions, the sole Supreme Government, Command and Disposition of the *Militia*, and of all Forces by "Sea and Land, and of all Forts and Places of Strength, is, and by the "Law of *England* ever was, the undoubted Right of his Majesty's and his "Royal Predecessors, Kings and Queens of *England*; and that both, or either "Houses of Parliament cannot, nor ought to pretend to the same, nor can "lawfully raise or levy War, Offensive or Defensive, against his Majesty, "his Heirs or lawful Successors: And yet the contrary hereof hath of late "been practised almost to the Ruin and Destruction of this Kingdom; and "during the late Usurped Governments, many Evil and Rebellious Principles "have been instilled into the Minds of the People of this Kingdom, which, "unless prevented, may break forth to the Disturbance of the Peace and Quiet "thereof, *&c.*

And in pursuance of this Statute, it was likewise ordained by the Authority aforesaid, in the 2d Statute for the *Militia* of the 14th Year of the same King, where not only the same Preamble is recited *verbatim*, as before in the former Statute, but it is also Enacted, "That no Person, (no not a Peer of
Chap. 3. "the Realm) shall be capable of acting as Lieutenant, Deputy-Lieutenant, "Officer or Soldier, by virtue of this Act, unless after the Oaths of Allegiance and Supremacy they take this Oath following; *viz.* I *A. B.* do "declare and believe, That it is not lawful, upon any Pretence whatsoever, "to take Arms against the King; and that I do abhor that traiterous Po"sition, that Arms may be taken by his Authority against his Person, or "against those that are Commissioned by him in pursuance of such Military "Commissions. And it is also to be noted, that all Mayors of Cities, or other Corporations, were obliged, by a former Statute of the 13th of this King, to take the same Oath. From both which Statutes and Declaration, we may draw these Conclusions: First, That the *Militia* (*i. e.* the Command of all Military Forces and Warlike Affairs) are declared to be wholly in the King. Secondly, That either, or both Houses of Parliament, cannot make any War, Offensive or Defensive, against him, *&c.* Pray mark that. Thirdly, That the contrary Practice hath tended almost to the Destruction of this Kingdom, and that many Evil and Rebellious Principles (whereof this without doubt is intended for the chief) have been instilled into the Minds of the People, *&c.* And lastly, That in pursuance thereof, all Persons above-mentioned were not only obliged to renounce taking up Arms against the King, upon any Pretence whatsoever; but also against any that shall be authoriz'd by the King's Military Commissions, without any Exceptions. And it is farther Enacted, That all Clergymen should be obliged to take this Oath, as well as the Laity; and it is likewise there ordained, That all Clergymen who were to enjoy any Livings or Preferments in the Church, were likewise, for the Space of Twenty Years next ensuing, obliged to subscribe this Declaration. So that it is no wonder, if the Loyal Clergy

of

of the Church of *England*, think themſelves not only tied by the expreſs Rules of Scripture, but alſo by the Laws of the Land, ſtrictly to obſerve this great Law of Paſſive Obedience, and Non Reſiſtance. Now pray ſee here the Doctrine of Non-Reſiſtance in its full Amplitude, yea, this very Doctrine declared to be the Law of this Kingdom, and that by two expreſs Acts of Parliament. And can you think the Two Houſes were not in earneſt when they made this Declaration? Surely had they not been ſo, they had been very ridiculous to jeſt with all our Laws and Liberties; had they not been, I ſay, verily perſuaded of the Truth of this Doctrine by Law, as well as by Scripture. So that I hope you muſt now be forced to confeſs, that even our own Repreſentatives have ſolemnly renounc'd for themſelves and the whole Nation, all Right of Reſiſtance, ſo much as defenſive, againſt thoſe commiſſioned by the King, upon any Pretence or Occaſion whatſoever; and we have left us nothing whereby to defend our ſelves againſt our Kings, or thoſe commiſſioned by them, (no, not if they never ſo much abuſe their Power) but the old Primitive Artillery of *Preces* and *Lachrymæ*. *Jov.* p. 219.

F. As for what you have more than once ſaid, that this Doctrine of Reſiſtance, if carried home, always ends in the Depoſition and Murder of the King; tho' it hath I grant ſometimes happened, yet that has not been always ſo, but moſt often to the contrary; as appears by thoſe Reſiſtances that were made in the Reigns of King *Richard* I. *Henry* III. *Edward* I. and divers Times in *Edward* and *Richard* IId's Reigns, before Things were driven to that Extremity, as they afterwards were. And as I will not juſtify the Depoſition of thoſe Princes, tho' done by Parliament, yet will I not abſolutely condemn them; ſince no Act of Parliament hath, as I know, ever done it: And tho' it is true, all the Proceedings in Parliament againſt *Edward* II. are taken off the Rolls, yet was it not done by Order of Parliament, but by *Richard* II. alone, when he by his exorbitant Courſes feared to be ſerved after the ſame Manner. But that there was in thoſe Times ſome Ancient Law extant, which was alſo deſtroyed by that King, appears by that remarkable Declaration of the Lords and Commons in Parliament, ſent by way of Meſſage to the King (then wilfully abſenting himſelf from the Parliament) by the Duke of *Gloceſter* his Uncle, and the Biſhop of *Ely*, who ſure were too great to tell ſo notorious a Lye. The Speech you will find at large in *Knighton*, beginning thus, *Domine Rex*; and after many Petitions, and good Advices, at laſt thus concludes, which I ſhall give you in *Latin*, —— *Sed & unum aliud de animo noſtro ſupereſt nobis ex parte Populi veſtri vobis intimare, habent enim ex antiquo Statuto, & de facto non longe retroactis temporibus experienter quod dolendum eſt habito, ſi Rex maligno Conſilio quocunque, vel inepta contumacia aut contemptu, ſeu proterva voluntate ſingulari, aut quovis modo irregulari ſe alienaverit à Populo ſuo, nec voluerit per jura Regni, & Statuta, & laudabiles Ordinationes cum ſalubri Conſilio Dominorum, & Procerum Regni, gubernari, & regulari, ſed captioſe in ſuis inſanis Conſiliis propriam voluntatem ſuam ſingularem proterve exercere, tunc licitum eſt iis cum communi aſſenſu Populi Regni, ipſum Regem de Regali ſolio abrogare & propinquiorem aliquem de ſtirpe Regis loco ejus in Regni ſolio ſublimare.* Col. 2683.

From whence yon may obſerve, that the Lords here relate to an Ancient Statute or Law then in being, tho' the Execution of it on the Perſon of his great Grandfather *Edward* II. was but of Times not long paſſed; and that King *Richard* might as well deſtroy the Record of that Law, being not then commonly known, or in private Men's Hands, as well as he did divers other Records; as appears in the 24th Article againſt this King, wherein it is ſet forth, "That the ſaid King had cauſed the Rolls of the Records touching the State "and Government of this Kingdom to be defaced and razed, to the great Preju- "dice of his People, and the Diſinheriſon of the ſaid Realm, *&c.* So that nothing is more certain, than that the Two Houſes of Parliament, at that Time, did look upon it as their undoubted Right to depoſe the King in caſe he violated the fundamental Laws and Conſtitutions of the Kingdom. Tho' how this could conſiſt with that Power which the King then exerciſed, of calling and diſſolving Parliaments at his Pleaſure, I do not underſtand, ſince it can never be ſuppoſed that a King, whilſt in full Power, would permit a Parliament, called in his Name, to ſit, to depoſe himſelf for evil Government.

As for the War made by the Two Houſes againſt King *Charles* I. I ſhall not undertake to juſtify it, for the Reaſons already given; as alſo becauſe

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it was not a War undertaken by the general Consent of the whole Kingdom, but carried on chiefly by the Puritan or Presbyterian Party: For tho' the City of *London*, and many other great Towns were for the Parliament; yet it is also certain, that the *major* Part of the Nobility and Gentry of *England* fought for the King, and were so considerable a Number, as to make an Anti-Parliament at *Oxford*; so that this War could never have happened, had not the King parted with the Power of dissolving of the Parliament out of his Hands. Much less will I justify the Murder of this King, or of any others above-mentioned, as being no necessary Consequences of that Resistance I only allow for Lawful, *viz.* That of the whole or *major* Part of the Nation. Nor were *Edward* II. or *Richard* II. put to Death by any Act or Order of Parliament, but were murthered in Prison; and the Murderers of *Edward* II. were afterwards attainted by Act of Parliament and executed as they deserved. But as for the Murder of King *Charles* I. it is not to be taken into this Account, it being not done by the Authority of the Lords and Commons in Parliament, but by a Factious Rump or Fag-End of the House of Commons, who sate by the Power of the Army; after far the *major* Part of the Members who were for the King were shut out of Doors, and the Lords voted useless and dangerous.

M. I confess you have made as good an Apology for these Actions as the Matter will bear; but that neither of the Two Houses can at this Day have any coercive Power over the King, or to call him to an Account for any thing he has done, appears by the express Declaration of both Houses in the Statute of the 12th of *Charles* II. as also in those but now cited, in which they utterly disclaim all making War, whether offensive or defensive, against his Majesty; much less can he be subject to any other Coercive or Vindictive Power, or ought any ways to be resisted by private Persons: Therefore supposing I should grant (as I do not) that the Parliaments had formerly a Power of deposing of their Kings, or that the Clergy, Nobility and People had also a Right of taking up Arms against the King in Case of notorious Tyranny, and Misgovernment; yet is all such Resistance expresly renounced, and declared unlawful by the Oath and Declarations now cited. So that tho' in the dark Times of Popery, such Resistance might be counted lawful, not only by the Laity, but also by the Bishops and Clergy, who ought to have taught the People better Doctrine; yet I think it had been much better for the Nation to have endured the worst that could have happened from the Tyranny of Kings, than to have transgress'd the Rules of the Gospel, and the constant Doctrine of the Primitive Church by Resistance and Rebellion against the Supream Power of the Nation.

F. I shall not now maintain that the Two Houses of Parliament have any Authority at this Day to depose the King, or levy a War against him, upon any Account; yet that they have still a Power to judge of the King's Actions, whether consonant to Law or not, and whether he has not broke the Fundamental Constitutions of the Kingdom, is no where given up, as I know of: But that Resistance in some Cases is not contrary to the Doctrine of the Gospel, I have already proved, and that it was not directly contrary to the Laws of the Land before these Statutes, you do partly grant. But since the main Strength of your Cause, lies in this Oath appointed by these Acts of Parliament, therefore if I can give a satisfactory Account of the true Meaning and Sense of these Acts, to be otherwise than you suppose, I hope you will grant that Resistance may still be lawfully made by the whole Body of the People in the Cases I have now put, against any Persons, who under Colour and Pretence of the King's Commission should violently assault their Persons in the free Exercise of their Religion, as it is by Law established, or should go about to invade their just Liberties and Properties, which the Fundamental Laws of *England* have conferred upon every Free-born Subject of it.

And in order to the clearer Proof of this, I shall make use of this Method; I shall first explain the Terms of this Declaration, and then I shall proceed to shew you that even in a legal Sense all defensive Arms, or Resistance of the King's Person in some Cases, or of those commissioned by him, is not forbidden, nor intended to be forbid by these Statutes and Declarations: First then, by taking Arms against the King, is certainly meant no more than making War against the King, according to the Statute of the Twenty fifth of *Edward* III. which de-

clares making War againſt the King to be Treaſon; and this is unlawful upon any Pretence whatſoever. Secondly, The Clauſe, *by his Authority againſt his Perſon*, is only to be underſtood of the King's Legal Authority; and by his Perſon, is *meant* his Natural and Politick Perſon, when acting together for the ſame Ends, as I ſhall ſhew you by and by. So that both theſe Statutes are but Declaratory of the Ancient Common-Law of *England* againſt taking up Arms, and making War againſt the King, and do not (in my Opinion) introduce any new Law concerning this Matter: So that whatever was Treaſon by the Statute of the 25th of *Edward* the Third is Treaſon by theſe Statutes, and no more; *viz.* all taking up Arms, or actual making War againſt the King in order to kill, depoſe, or impriſon him, *&c.* as Sir *Edward Coke* ſhews us in his Third *Inſtitut.* in his Notes upon this Statute; yet notwithſtanding, after this Statute of the 25th of *Edward* the Third, the Clergy, Nobility, and People of *England* aſſembled in Parliament, did ſuppoſe it ſtill lawful to take up Arms againſt thoſe illegally commiſſioned by the King, in caſe of notorious Miſgovernment and Breach of the Fundamental Laws of the Nation; as appears by that general Reſiſtance made by Reaſon of the evil Government of the Duke of *Ireland*, and thoſe concerned with him, in the 11th of *Richard* the Second; which, as I have already proved, was allowed for lawful by Act of Parliament, and conſequently by the King's own Conſent, without which it could never have been ſo declared. The like I may ſay for that Reſiſtance which was made in King *Henry* the Sixth's Reign, by *Richard* Duke of *York*, and the Earls and Barons of his Party, againſt the Evil Government of the Queen, and the Duke of *Somerſet*, who governed all Affairs in an Arbitrary and yet unſucceſsful Manner, by Reaſon of the Eaſineſs and Weakneſs of King *Henry*. But though this Reſiſtance was alſo approved of in the next Parliament of the 33d Year of this King, yet I ſhall not ſo much inſiſt upon it, becauſe I know you will alledge, that this was made by the Lawful Heir of the Crown againſt an Uſurper, ſince the Crown was not long after adjudged to be his Right, though King *Henry* was allowed to wear it during his Life: Yet however, it ſhews the Opinion of the Clergy, Nobility, and People of *England* at that Time, concerning the Lawfulneſs of ſuch Reſiſtance, before this Declaration of the Eſtates of the Kingdom, concerning the Legality of the Duke of *York*'s Title, was made in the Parliament above-mentioned.

Vid. Grafton's Chronicle, p. 627.

Thirdly, That the Parliament by theſe Statute of the 13th of *Charles* the Second for the *Militia*, never intended thereby to enable, or leave it in the Power of that King, or his Succeſſors, to make this Kingdom an abſolute Deſpotick Monarchy inſtead of a limited one; as they muſt have done, had they declared that the King, and thoſe Commiſſioned by him, might do what they pleaſed with the Religion, Lives, Liberties, and Eſtates of the People of this Nation, and that it was Treaſon to reſiſt in any Caſe whatſoever. Sure they could not but remember that apparent Commiſſion of Sir *Phelim Oneal*'s, in the Year --41, whereby he pretended to be impowered to drive the *Engliſh* Proteſtants out of *Ireland*, and to ſet up the Popiſh Religion in that Kingdom, and reſtore the *Iriſh* to their Eſtates; and ſure divers of them could not be unmindful that this was to give away all Right of Self-Defence, in caſe any future King ſhould by his own innate Tyrannical Temper, or the evil Counſel of wicked Men, be perſuaded to uſe Force upon the Perſons of the Lords and Commons, either whilſt they were actually ſitting, or in their Paſſage to the Two Houſes, ſince by this Act or Oath, if underſtood in your Senſe, they muſt have barred themſelves, and the whole Nation, of all Right of Self-Defence, in any Caſe whatſoever, though of the greateſt Extremity; and therefore I doubt not, but the Intent of this Parliament was to leave Things as they found them. And as it was abſolutely unlawful for the People of this Nation to take up Arms againſt the King, ſo it is alſo as unlawful in him, or thoſe Commiſſioned by him, to make War upon the People, or to diſſeize them by Force of their Religion, juſt Rights, Liberties, or Eſtates: And if the King hath a Right to defend himſelf, and his Crown and Dignity, againſt Rebellion, ſo muſt the People of this Nation have a Right likewiſe to defend themſelves againſt Arbitrary Power, in caſe of an Invaſion of any of the Fundamental Rights above-mentioned; or elſe all Bounds between a Limited and Deſpotick Power will be quite taken away, and the King may make himſelf as abſolute as the King of *France* or Great *Turk* whenever he pleaſes.

M. I will not diſpute with you about bare Matter of Fact, or that a prevailing Faction might not in turbulent Times, and during the Reigns of weak and ill-adviſed Princes, take upon them by Force of Arms, to remove Evil Councellors, and to put the Government of the Kingdom in what Hands they pleaſed, and then procure Acts of Parliament to indemnify themſelves for ſo doing: Yet I cannot allow that even ſuch Acts could make it lawful to take up Arms againſt the King, or thoſe Commiſſioned by him, upon any Pretence whatſoever. So that though I grant that the Intent of this Parliament of King *Charles* the Second, was not to make any new Law againſt Reſiſtance, or taking up Arms againſt the King, yet was it their Deſign ſo to explain the Ancient Statute of the 25th of *Edward* the Third, that none ſhould for the Future doubt in the leaſt, that all taking up Arms, or Reſiſtance of the King, or thoſe Commiſſioned by him, upon any Pretence whatſoever, was unlawful and treaſonable: And for this we need go no farther than the very Words of theſe Declarations, which the Parliaments of the 12th and 13th of *Charles* the Second have made concerning this Matter: As Firſt, in the Statute of the 12th of *Car.* 2. *Cap.* 30, for attainting the Regicides, the Two Houſes of Parliament expreſsly declare, " That by the Fundamental Laws of this Kingdom, " neither the Peers of this Realm, nor the Commons, nor both together in Parliament, nor the People collectively, or repreſentatively, nor any other Perſons " whatſoever, ever had, hath, or ought to have any Coercive Power over the Perſons of the Kings of this Realm". Whereby not only all the Traiterous Examples of the Depoſitions, and Impriſonments of King *Edward*, and *Richard* the Second, are expreſsly condemned; but alſo all taking Arms to force the King to redreſs our Grievances, whether he will or not. And farther, That all Arms, whether Offenſive or Defenſive, are expreſsly forbid, pray mind that Clauſe in the Preamble to theſe Acts of the *Militia* I now mentioned; wherein that Parliament expreſsly renounces " all taking up Arms, as well *Defenſive* as Offenſive againſt the King: And the Words of the Oath it ſelf are yet more ſtrict, " That it is not lawful, *upon any Pretence whatſoever*, to take up Arms againſt the King". Now can any Thing be plainer, than that all defenſive Arms, tho' for our Religion, Lives, and Liberties, or whatſoever elſe you pleaſe, are expreſsly declared to be againſt the Fundamental Laws of this Kingdom.

But as for the dreadful Conſequences of this Law, if never ſo ſtrictly taken, they are not ſo bad as you are pleaſe to fancy: For as to your Inſtance of Sir *Phelim O-neal*'s pretended Commiſſion from King *Charles* the Firſt, you may be very well ſatisfied, that it was a notorious Piece of Forgery; ſince beſides that good King's conſtant Denial of any ſuch Commiſſion granted by him, Sir *Phelim*, when he came to ſuffer in *Ireland*, for raiſing that horrid Rebellion, did voluntarily at the Gallows acknowledge, that he had forged it himſelf, by putting the Seal of an old Patent, which he had by him, to that pretended Commiſſion you now mention: Nor indeed can it ever enter into my Head, that any King ſhould grant a Commiſſion to deſtroy or make War upon his People as long as they continue in their Duty to him, though of a different Religion from himſelf; tho' perhaps he may think fit for ſome Reaſons, to diſarm them, or deny them the publick Exerciſe of their Religion, or render them uncapable of bearing any Offices of publick Truſt in the Kingdom. But if theſe ſhould be lawful Cauſes of Reſiſtance, why the Papiſts ſhould not be allowed it as well as the Proteſtants, I can ſee no Reaſon to the contrary. As for your other Inſtance, that the Parliament by renouncing all defenſive Arms, muſt be ſuppoſed likewiſe to give up all Right of Self-defence, in Caſe the King, or any Commiſſioned by him, ſhould uſe any Violence to the Perſons of the Lords and Commons aſſembled in Parliament, or in going thither: This is ſo unlikely, and remote a Caſe, that it hardly comes under the Conſideration of a bare Poſſibility. But, however, let the worſt that can happen, I am very well ſatisfied, that the Parliament was then ſo thoroughly convinced of the Miſchiefs had befallen this Nation by this Republican Doctrine of Reſiſtance, having been the Cauſe of the Deſtruction of the beſt conſtituted Church and Government in the World, as alſo of the Murder of one of the beſt Princes that ever Reigned, that they were reſolved rather to truſt to the Coronation Oaths, and innate Goodneſs of our preſent and future Kings, than to ſuppoſe any War could be lawfully made againſt them, upon any Account whatſoever; which would have been expreſsly contrary not only to the Doctrine of the Church of *England*, but the known Laws of the Land.

F. I do not deny, but the Perſons of the Kings and Queens of this Realm are, and ought to be Sacred and Inviolable; and yet no Man will therefore ſay, that they are irreſiſtible too in all Caſes whatſoever. As if the King (for Example) ſhould attempt to raviſh Women, or rob, or murder Men upon the Highway, or in the Streets, as the Ancient Hiſtorians relate of *Nero* and *Commodus* the Emperors, and as is reported of the laſt King of *Portugal*, and which was one of the Reaſons of the Eſtates of the Kingdom removing him from the Government. And as our *Henry* the Vth. is related by our Hiſtorians to have robbed Men upon the Highway before he was King: So if he had gone about to continue the ſame Frolick after he came to the Crown, I do believe his Perſon, and all thoſe that robbed by his Commiſſion, had not been irreſiſtible; nor would it have been Treaſon within the Statute of the 25th of *Edward* the IIId. though he was then actually King, any more than it would have been Treaſon had the like happened when he was Prince, tho' he was expreſly within that Statute. And yet this would not have contradicted the Parliament's Declaration in the 12th of *Car.* the IId. That neither the Parliament nor the People have Coercive Power over the Perſons of the Kings of this Realm; ſince by Coercive Power muſt be here underſtood, his being ſubject to the Penalties of the Law, or being called to an Account by any Juriſdiction. But there is a vaſt Difference between that, and Reſiſtance for Self-Defence, ſince I may uſe this againſt the Violence of my Father in the State of Nature, as I have already proved; tho' I cannot juſtify the Puniſhment of my Father, or calling him to an Account as his Superior: Therefore 'tis only in the King's Politick Capacity, that he can be ſaid to do no Wrong; ſince you ſee he may perſonally commit the greateſt Crimes imaginable, tho' his Perſon is unpuniſhable for want of a Superior Power to call him to an Account: Yet 'tis not ſo with thoſe who act by his Illegal Commiſſions or Commands; ſince, having delegated the Executive Part of his Regal Power to his ſubordinate Miniſters and Officers, 'tis they that are accountable and puniſhable too by the Law of the Land, in caſe they any ways tranſgreſs or violate it by his illegal Commiſſions or Commands, as I ſhall prove more at large by and by. And as no War, properly ſo called, can be made againſt a ſingle Perſon, but againſt a Man, as he is aided or aſſiſted by many others; ſo this War againſt the King can be only interpreted of ſuch Wars or Rebellions as are made againſt him in his politick Capacity, as he is King and Supreme Governor of the Realm, and the Commander of all the *Militia* thereof to legal Intents, and for the Defence thereof againſt Foreign or Domeſtick Enemies; nor was there any great Fear, according to the Ancient Legal Conſtitution of this Kingdom, that this could often fall out, or indeed be put in practice to any other Purpoſe by the Kings of this Realm, if we conſider the Ancient Form of ordering the Forces or *Militia* of this Kingdom.

For, in the firſt place, I deſire you to obſerve, That by the Common Law of *England*, before theſe Acts of the *Militia*, the King himſelf could not, but in Caſe of Invaſion or Inſurrection, levy or keep on foot any ſtanding Forces in *England*, unleſs for Foreign Succours, which was uſually by Contract with ſome great Lord or other Perſon, or by Tenure, againſt the *Scotch* and *Welſh*; and as for the *Militia*, it was never reduced into ſtanding Troops, Companies, or Regiments, till the *Spaniſh* Invaſion, as will appear by all Acts of Parliament in the Statutes at large, where Acts for the Aſſize of Arms were made only for Men to provide and have in Readineſs ſuch Horſes and Arms, to ſhew them before the King's Commiſſioners when they ſhould be required to take View of them; a Regimented *Militia*, being of no elder Date than Queen *Elizabeth*. But King *James* the Iſt. did, by Act of Parliament in the firſt Year of his Reign, repeal all former Acts for Aſſize of Arms, and never eſtabliſhed any thing in lieu thereof: So it ſtood till King *Charles* the IId.'s Time, that theſe new Acts for the *Militia* were made. And (to confirm this Point beyond all Diſpute) in all the Quarrels between the King and the Barons, and *York* and *Lancaſter*, the Parliament often refuſed to meet until the Forces were diſbanded that were raiſed upon thoſe Occaſions. Nor had any King ſtanding Forces or Guards, till *Henry* the VIIth. when that of the Yeomen of the Guard was ſettled by a ſpecial Act of Parliament: And what is moſt remarkable, the Commons in the Long Parliament of *Charles* the IId. did, by their Votes entred upon their Journals, declare and aſſert, *That by Law no Armed Force could be kept up in Time of Peace*, except the *Militia*; and as for Foreign Succours, they were obliged to be carried immediately to the

Port of their Diſcharge, and were not to exceed one Month at fartheſt from the Time of their firſt Muſter. As for Caſtles and Forts within the Realm, they were almoſt all ſupplied and defended by Tenures; but for the *Militia* of Old Time, it was in the Sheriffs of the Counties to make uſe thereof for the Execution of the Laws, and Defence of the Kingdom, except in the Caſes aforeſaid; and it was Treaſon for any Subject to levy Soldiers, except by the King's Commiſſion, and in the Caſes aforeſaid; or ſo much as to ride or go arm'd, as may appear by the Statute of *Northampton*, in the 2d of *Edward* the IIId. much leſs was it lawful for them to take up Arms, unleſs in their own Defence againſt illegal Violence, and in ſuch manner as the Law directs: And it was one of the Articles that was adjudged to be Treaſon in Parliament againſt *Mortimer*, That he rode armed to Paliament, and threatned the Prelates and Peers that did any thing againſt his Will, and who adviſed the King to levy War upon his Subjects. See alſo *Coke*'s 4th Inſtitutes, *Title Council-board*, where the 4th Article againſt the *Spencers* is, "That they falſly and maliciouſly had counſelled "the King to raiſe Horſe and Arms in Deſtruction of the good People, againſt "the Form of *Magna Charta*; and ſo by their evil Counſel would have moved "War within the Realm, to the Deſtruction of Holy Church and of the People, "for their proper Quarrel: So that taking Arms by the King againſt his Subjects, and the Subjects againſt the King, was both alike againſt Law.

Vid. *Parliam. Roll. 4to. Ed. 3. de Reg. de Mortuo Mari. Art. 2.*

2*dly*, That taking Arms againſt the King, in Conſtruction of Law, is Levying War: But this can by no means extend to Defenſive Arms in Maintenance of the Law, which is allowed and enjoined; and that nothing elſe was here meant, is plain, ſince by the ſubſequent Words in this Oath, it is reſtrained to the taking Arms by his Authority againſt his Perſon, or thoſe Commiſſioned by him: Which ſhews, that nothing here is intended to be forbidden, but taking up Offenſive Arms upon popular Pretences, without and againſt the Authority of the Law; which is further explained in another Teſt by the Authority of both Houſes of Parliament.

Thirdly, 'Tis obſervable, this is but a Teſt upon ſome that were to come into Offices, and can by no means make any Change in the Ancient Law, which cannot be changed by Implication. Nor does this amount to ſo much; the firſt Part of this Oath requiring only that the Party admitted into Office, ſhall ſo declare and believe; and tho' the Second Clauſe calls it a Traiterous Poſition, yet it is reſtrained only to theſe Two Particulars, "That Arms may "not be taken up by the King's Authority againſt his Perſon, or thoſe "Commiſſioned by him: Which can have reference to nothing but that Diſtinction taken up in the late Times of Civil War, when the Parliament pretended to take Arms, and grant Commiſſions in the Name of King and Parliament, by vertue of that Authority which they ſuppoſed he left with them at *Weſtminſter*: So that this Clauſe can by no means exclude any Arms made uſe of for legal Defence according to Law.

Fourthly and Laſtly, Tho' the Words, *againſt thoſe Commiſſioned by him*, may ſeem to extend the Matter further, and is miſtaken by ſome, as if it required at leaſt Paſſive Obedience to all Commiſſions of the King, tho' never ſo illegal; yet there is not the leaſt Colour for it, ſince nothing is a Commiſſion but the King's legal Command or Authority purſuant to ſome Law, and for putting the ſame in Execution, which is the legal Definition of a Commiſſion. And when this Teſt was firſt brought in to the Second Parliament of King *Charles* the IId. and that the Word Legal was offered to be added to the Bill; upon a long Debate it was only left out, becauſe it was declared by all the Lawyers in the Houſe, (even by Sir *Heneage Finch*, then the King's Sollicitor) and agreed to by the whole Houſe, That it was clearly implied, and could bear no other Conſtruction, but that all Illegal Commiſſions were null and void, and in no legal Senſe could be called Commiſſions: So that taking up Arms in the Defence of the Law, and purſuant thereunto, cannot in any wiſe be called a taking Arms againſt the King's Perſon, or thoſe Commiſſioned by him. And farther, that by the Words, *in purſuance of ſuch Military Commiſſions*, are meant ſuch as are warranted by that Act, and ſuch as the King may iſſue by his Royal Authority, which is bounded by Law, and conſequently cannot grant any Commiſſions, but what are according to Law. So that if theſe Commiſſions are granted to Perſons utterly diſabled by Law to take them, as all are that do not take the Teſt appointed by the Act of

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the 25th of King *Charles* II. Entituled, *An Act to prevent the Dangers that may arise from Popish Recusants:* As also all Commissions to do any Illegal, violent Action, are absolutely void, and consequently may be resisted; or else our *Magna Charta*, with all the other Laws that establish Liberty and Property, as also our very Religion it self Established by Law, may be either undermined by the King's new dispensing Power, or else subverted by open Force; and every Commission-Officer in a Red Coat, will be as Sacred and Irresistible as the King himself.

But to conclude: That the Instances I have given, that the King's Commission may be abused to the Destruction of the Nation; nay, of the whole Parliament, are not so unlikely and remote as you imagine; Pray let me put you in Mind, that as for that pretended Commission to Sir *Phelim Oneal*; tho' it is true, it proved at last to be forged, yet was it not known to be so till long after; and therefore having all the Signs of a true Commission under the King's Great Seal, the poor Protestants in *Ireland* were to have had their Throats cut according to this Oath, before ever they could be satisfied whether it were true or not. But that a Popish King persecuting and destroying his Protestant Subjects only for Matters of Religion, is not so improbable a Thing as you would have it; the *French* King's late Dragooning, Imprisoning, and sending to the Gallies all that refused to renounce Heresy, (as they call it,) and subscribe to the Articles of the *Romish* Religion, has given us but too sad and recent an Example: And how you can assure me, that the King acting upon these very Principles, and being governed by Jesuit Confessors, will never do the same Things, I should be glad to receive some better Satisfaction than his bare Word to the contrary.

Nor yet is my other Instance of its being left according to your Doctrine in the King's Power, to make a violent Assault upon the Persons both of the Lords and Commons assembled in Parliament, whenever he pleased, without any Resistance whatsoever, so remote and improbable as you are pleased to make it; since you may find it still upon Record among the Articles exhibited in Parliament against *Robert de Vere*, Duke of *Ireland*, *Robert Tresilian*, Chief Justice, and Sir *Nicholas Brembur*, in the Parliament of the 11th of *Richard* II. (which I have already mentioned) the 15th Article of which was, "That they by their false Council "had caused the King to command the said *Nicholas*, being then Mayor of *Lon-* "*don*, suddenly to rise with a great Power to kill, and put to death the said "Lords; (*viz. Thomas* Duke of *Gloceſter*, and the other Lords there named) "and the Commons (*viz.* of the Parliament of the 10th of this "King) who were not of their Party and Conspiracy; for the doing of which "Wickedness, the said grand Traytors abovesaid, were Parties and Presents to the "Destruction of the King and his Realm. So that if this Treason had not been discover'd, and that no private Persons might then resist those Commissioned by the King, it would have been Treason, according to your Principles, for the said Lords and Commons to have resisted those that were thus sent to assault them, and take away their Lives; and what hath once happened, 'tis not impossible but it may happen again. Therefore this is a Thing to be considered as a necessary Consequence of your Sense of this Oath. So that upon the whole Matter, and considering the late of Scene of Affairs, I durst leave it to the Judgment of any indifferent Foreigner, tho' a Papist, which was most likely, before the unexpected Coming of the Prince of *Orange* into this Kingdom, that the People should rise up in Arms, and expel the King from his Throne, or that he should by Virtue of the pretended Sense of this Oath, back'd by your Doctrine of Passive Obedience, have enslaved this Nation, and set up what Government and Religion he pleased.

Vid. Rot. Parl. 11 *Rich.* 2. *pars secunda.*

M. I must confess you have given a very cunning and specious Gloss upon the Words of this Oath, and Declaration of the Parliament of King *Charles* II. but whether it is legal or not, I very much doubt, since I never heard of it before; and I could have wish'd, that if they designed not to lay a Snare upon Men's Consciences in this great Point, that they would have been more clear in expressing all those Cases wherein it might be lawful for us to resist the King, or those Commissioned by him; as also who should judge, when the King's Commissions are so illegal and violent as to require Resistance; for if every private Subject may judge of the Legality, or Illegality of the King's Military Commissions, and can raise a Party strong enough to make Opposition against those that are Commis-

ſioned by them in the Execution of the King's Orders, a diſcontented Faction may ſoon find a Pretence to raiſe another Rebellion, and Civil War, as dreadful as the former; and notwithſtanding your great Care and Concern for the King's Perſon, which you grant to be ſacred and inviolable, could it long continue ſo? For if the King himſelf appeared at the Head of his Men, to command and encourage them in their Duty, it would be much worſe, as long as the Matter they took up Arms for, ſhould be by them accounted a Violation of the Laws. Thus we may remember, that though the Parliament of Forty One did pretend to take up Arms for Defence of the King's Perſon, and only to take away Evil Counſellors; yet did they for all that, order their Generals and Officers to fight as much when the King was perſonally preſent, as at any other Place or Time; ſo that his Majeſty's Perſon (had not God thought fit to order it otherwiſe) might have been as well deſtroyed in the Battels of *Edgehill*, or *Naſeby*, as his great Grandfather King *James* III. of *Scotland*, was in that Battel againſt his Rebellious Subjects, Headed by his own Son. So that according to your Interpretation, inſtead of mending the Matter, this Parliament of King *Charles* II. had only left it far worſe than they found it. For whereas the Long Parliament made themſelves the ſole Judges, and Redreſſers of the King's Violations of the Peoples Rights; now according to your Interpretation of this Oath, and Declaration of the Parliament of King *Charles* the Second, every private Man may not only judge of the King's Violation of the Law by his Military Commiſſions; but alſo make Reſiſtance againſt them, whenever they think themſelves able ſo to do. And then notwithſtanding that Parliament's utter renouncing all Arms, whether offenſive or defenſive, to be raiſed by themſelves againſt the King, they would have ſtill left a Power in any Part of the People ſtrong enough to make this Reſiſtance which they had renounced for themſelves, who are their Lawful Repreſentatives. Thus for Example; ſuppoſing the laſt Civil War had begun upon the Account of raiſing of Ship-Money, which whether it was lawful, I will not now diſpute; it was ſufficient that all the Judges except Two, gave their Opinions for it; and if any County in *England* ſtrong enough to make an Inſurrection, had roſe in Arms upon the Levying of this Tax (as it has ſeveral times happened even about Taxes granted in Parliament) this (though ſmall) yet being look'd upon againſt Law, muſt have engaged the whole Nation in a Civil War, and alſo endangered His Majeſty's Perſon, in caſe he had appeared in the Field with thoſe Men he had raiſed to ſubdue that Rebellion; ſo that I am ſtill ſatisfied that it is far better to ſuffer a Miſchief than an Inconvenience; that is, it is better to truſt to the King's Conſcience and Diſcretion, what Commiſſions to grant, though ſometimes perhaps they may chance to be illegal, than to leave it in the Power of the People to riſe in Rebellion, whenever they think ſuch Commiſſions to violate their ſuppoſed, or pretended Liberties and Properties.

F. I ſee you will not argue againſt the Reſiſtance of the King's Perſon, in caſe he ſhould go about to Raviſh, Rob, or Murder his People. But now you raiſe another Difficulty who ſhall judge, and conſequently make this Reſiſtance againſt the King's Commiſſions, when executed by illegal Perſons, or to illegal and violent Ends. For if the People may judge for themſelves of the Illegality of ſuch Commiſſions, a Rebellion may be raiſed, and His Majeſty's Perſon endangered, notwithſtanding all the Proviſion the Parliament have made againſt it. But before I anſwer this Argument of yours, pray give me leave to aſk you One or Two Queſtions: Do you think the King's late Declaration for the Diſpenſing Power, and the Commiſſions granted thereupon, to be according to Law or not?

M. I muſt confeſs I think they are unlawful, yet it does not follow that they may be therefore reſiſted.

F. I do not aſk you that now; but only tell me whether you think the Biſhops are obliged in Conſcience to diſperſe that Declaration, or the Clergy to read it in their Churches? And whether thoſe have done well who have refuſed to read it?

M. I muſt tell you, I am ſo good a Proteſtant, and ſo true an *Engliſhman*, that I cannot allow the King that Power; and therefore I muſt grant that the Biſhops did bravely, and like true Chriſtian Biſhops, to refuſe to diſperſe it; and where it was diſperſed, the Inferior Clergy have done very well not to read it.

F. Well

F. Well then, notwithſtanding all the dreadful Miſchiefs proceeding from private Subjects judging of the Legality, or Illegality of the King's Declarations, and Commiſſions, or Commands; yet they may, it ſeems, not only judge whether they are lawful or not; but a Diſobedience to them may not only be lawfully exerciſed, but is very commendable. Now what is this Diſobedience to theſe Commands, but a Moral, or Civil Reſiſtance of the King's Power in this Matter? And why may not ſuch a Judgment be made by the People in as plain a Caſe, and a Reſiſtance alſo follow thereupon againſt ſuch violent illegal Commiſſions (ſuppoſe to raiſe Money without Act of Parliament, or to Dragoon Men to go to Maſs) ſince the Violence is more evident and apparent in this Caſe upon Men's Perſons, than in the other upon the bare Conſciences of the Biſhops and Clergy? For the Force being more immediate and preſſing upon their Perſons and Eſtates, there is no other Means left but to reſiſt it if they are able.

M. I can give you very good Reaſons to ſatisfy you, why, tho' I grant private Subjects may judge of the Legality or Illegality of the King's Commiſſions, and alſo refuſe to obey his Illegal Commands, and alſo that all publick Officers ought to take Care at their Peril how they act by, or excute ſuch illegal Commiſſions; yet that it does not therefore follow that ſuch illegal Commiſſions or Orders though executed upon the whole Body of the People, may be reſiſted by them; for all Limitation of the Royal Power being only voluntary, and proceeding from the meer Grace and Favour of our Kings, they are not compellable by Force, or reſiſtable if they ſhould impoſe their own Proclamations or Edicts upon us inſtead of Laws. For tho' I grant that the King hath no juſt, or legal Authority to act againſt Law, and that if he knowingly put any Subject to Death contrary to Law he is a Murderer; and no Prince can have any ſuch Prerogative, as to commit open downright Murders either in his own Perſon or by thoſe who act by Commiſſion from him; But what follows from hence? That they may reſiſt or oppoſe them if they do: This I abſolutely deny, becauſe God and the Law have commanded us not to reſiſt; and I ſee no Inconſiſtency between thoſe Two Propoſitions; That a King hath no Authority to act againſt Law, and yet that neither he, nor thoſe commiſſioned by him though acting againſt Law, may be reſiſted. Both the Laws of God, and the Laws of our Country, ſuppoſe theſe Two to be very conſiſtent. *S. C. R.* p. 190. *& deinde.*

For notwithſtanding the Poſſibility that Princes may thus abuſe their Power, and tranſgreſs the Laws whereby they ought to govern, yet they alſo command Subjects in no Caſe to reſiſt; and it is not ſufficient to juſtify Reſiſtance if Princes do what they have no juſt Authority to do, unleſs we have alſo a juſt Authority to reſiſt. He who exceeds the juſt Bounds of his Authority is liable to be called to an Account for it; but he is accountable only to thoſe who have a Superior Authority to call him to an Account. No Power whatſoever is accountable to an Inferior; for this is a Contradiction to the very Notion of Power, and deſtructive of all Order and Civil Government. Inferior Magiſtrates are on all Hands acknowledged to be liable to give an Account of the Abuſe of their Power, but to whom muſt they give an Account? Not to their Inferiors, nor to the People whom they are to govern; but to Superior Magiſtrates, or to the Sovereign Prince who governs all. Thus the Sovereign Prince may exceed his Authority, and is accountable for it to a Superior Power; but becauſe he hath no Superior Power on Earth, he cannot be reſiſted by his own Subjects, but muſt be reſerved to the Judgment of God who alone is the King of Kings.

F. In the firſt Place I deny (and I have ſufficiently proved the contrary) that all Limitation of Royal Power proceeded at firſt from the meer Grace and Favour of our Kings; ſince the Crown of *England* has been from its firſt Inſtitution limited by Laws, and the People have likewiſe always enjoyed a Right and Property in their Lives, Liberties, and Eſtates by the ſame Laws: But tho' you and I are thus far agreed, that the King hath no Juſt and Legal Authority to act againſt Law, and that if he put any Man to Death, or take away his Eſtate contrary to it, it is Murder and Robbery; and likewiſe that the Subjects may be capable of judging concerning ſuch Illegal Commands: But you will not allow, that if ſuch a limited Monarch ſhould ſend his Mercenary Forces to take away our Lives or Eſtates, or to Dragoon us till we will

will own our ſelves of his Religion, that thoſe Inſtruments of his Tyranny may be reſiſted; or that I have brought any Reaſon for it. Whereas if you had but attended better to my Diſcourſe at our Third and Fourth Meetings, you might have remembred that I plainly enough proved to you, that God hath not given Princes, nor thoſe commiſſioned by them, any Authority to Murder or enſlave their Subjects; and your ſelf then granted, *That every Man hath Power to defend his Life againſt him who hath no Authority to take it away*; which holds more ſtrongly in our Conſtitution; where if the King give a Man a Commiſſion to act contrary to the Law of the Land, it is altogether void, and the People may as well juſtify their Reſiſtance of thoſe Officers or Soldiers who ſhould come to dragoon or perſecute them, for profeſſing the Religion eſtabliſhed by Law, as if he had ſent them downright to cut their Throats. And this being their Right by the Laws of God and Nature, whether God hath taken away this Right by an expreſs Precept in the holy Scripture, I alſo examined at thoſe Meetings. But whether any Municipal Law of the Land hath reſtrained us from it, I have alſo now conſidered and proved it contrary to the true Intent and Meaning of theſe Acts concerning the Militia. And therefore to ſay, that it is not ſufficient to juſtify Reſiſtance, if Princes do, or command what they have no legal Authority for, unleſs we can alſo ſhew an Authority to reſiſt, is a Miſtake; if by Authority you mean an expreſs Civil Law for it; becauſe ſuch Reſiſtance in abſolute Monarchies is juſtifiable by that which is Prior to all Civil Laws, the Right of Self-Defence, or Preſervation: And ſo likewiſe in limited Kingdoms, there is the ſame Neceſſity of defenſive Arms upon a general Breach, or Violation of any fundamental Conſtitution of the Government, ſince it cannot be kept or maintained without ſuch Reſiſtance be allowed.

S. C. R. p. 59.

So that if the King hath no Authority to act contrary to Law, he cannot ſure delegate that to others, which he had not in himſelf; and conſequently ſuch Commiſſions to perſecute, or murder Men contrary to Law, being in themſelves void, the Perſons that execute them being no Officers, may be juſtly reſiſted, and the Reſiſtance of ſuch an illegal Act doth not at all derogate from his Sovereignty as King, ſince (as I told you before) that is limited only to the Performance of Legal Acts, and extends not to Illegal Orders or Commands. And as for the reſt of the Reaſons you give againſt this Reſiſtance, *viz.* becauſe he who exceeds the juſt Bounds of his Authority, is liable to be called to an Account for it, only by thoſe who have a Superior Authority to do it; whereas no Power whatſoever is accountable to an Inferior: You do but impoſe upon me and your ſelf the ſame Falacy which you have ſo often made uſe of, in making being accountable all one with irreſiſtible, which are vaſtly different; and therefore your Concluſion is as falſe, that becauſe the Sovereign Prince may exceed his Authority, and is only acountable for it to God, that therefore he cannot be reſiſted by his own Subjects; for he may be reſiſted, and yet be ſtill unaccountable; thoſe Two differing as much as Self-Defence does from Puniſhment, as I have more than once told you.

M. I cannot reſt ſatisfied with this Reply; for though I ſo far agree with you, that an Act without a Legal Authority carries no Obligation at all along with it, and therefore cannot oblige the Subject to Obedience. Now this is true, if by Obedience you mean an active Obedience; for I am not bound to do an ill Thing, or an Illegal Action, becauſe my Prince commands me. But if you mean Paſſive Obedience, it is as manifeſtly falſe; for I am bound to obey, that is, not to reſiſt my Prince when he offers me the moſt unjuſt or illegal Violence. Nay it is very falſe and abſurd to ſay, that every Illegal is an Inauthoritative Act, which carries no Obligation with it. This is contrary to the Practice of all Human Judicatures, and the daily Experience of Men, who ſuffer in their Lives, Bodies or Eſtates, by an unjuſt or illegal Sentence. Every Judgment contrary to the true Meaning of the Law is in that Senſe illegal; and yet ſuch illegal Judgments have their Authority and Obligation, till they are reſcinded by ſome higher Authority. This is the true Reaſon of Appeals from Inferior to Superior Courts, to rectify Illegal Proceedings, and reverſe illegal Judgments, which ſuppoſes that ſuch illegal Acts have Authority till they are made null and void by a higher Power; and if the higher Powers, from whence lies no Appeal, confirm and ratify an unjuſt and illegal Sentence, it carries ſo much Authority and Obligation

S. C. R. p. 192, 193.

ſation with it, that the Injured Perſon hath no Redreſs, but muſt patiently ſubmit; and thus it muſt neceſſarily be, or there can be no End of Diſputes, nor any Order or Government obſerved in Human Societies.

And this is a plain Demonſtration, that though the Law be the Rule according to which Princes ought to exerciſe their Authority and Power; yet the Authority is not in the Laws, but in the Perſons that Execute them: For otherwiſe, why is not a Sentence pronounced according to Law by a private Perſon, of as much Authority as a Sentence pronounced by a Judge? Or how doth an Illegal Sentence pronounced by a Judge come to have any Authority? For a Sentence contrary to Law cannot have the Authority of the Law. And why is a Legal, or Illegal Sentence reverſible, and alterable, when pronounced by one Judge, and irreverſible and unalterable, when pronounced by another: For the Law is the ſame, and the Sentence is the ſame, either according to Law, or againſt it, whoever the Judge be: But indeed the Authority of the Perſon is not the ſame, and that makes the Difference. So that there is an Authority in Perſons, in ſome Senſe diſtinct from the Authority of Laws, nay Superior to it; for there is ſuch an Authority, as though it cannot make an Illegal Act Legal; yet it can, and often doth make an Illegal Act binding and obligatory to the Subjects, when pronounced by a competent Judge.

F. I think, notwithſtanding all you have now ſaid, your Diſtinction of a Supreme Authority in Perſons, above and diſtinct from the Authority of Laws, will prove a meer Notion; for you grant that the King hath no Juſt or Legal Authority to act againſt Law, and that if he put any Man to Death contrary to it, it is downright Murder; but you will not allow, that if the King ſhould thus murder never ſo many Thouſands, either He, or thoſe Inſtruments of Tyranny may be reſiſted; and therefore you would fain top upon me your old Diſtinction of an Active and Paſſive Obedience: The former of which I very well underſtand, but as for the latter, I have long ſince proved, that it is ſo far from being any Obedience, that it is indeed downright Diſobedience, or a Refuſal to do that which the Prince commands; ſo that truly your ſelf have taught me to diſtinguiſh between the King's Perſonal Authority, and his Legal; for otherwiſe, why are you not as much obliged to yield an Active Obedience to the King's Perſonal Illegal Commiſſions or Commands, as to his Legal Ones, if there were no Difference between them? So then, all the Difference between us lies in the Meaſure of the Diſobedience; you maintaining, that it is ſufficient not to yield Obedience to ſuch Illegal Commiſſions and Commands; and I, that beſides this Denial of Obedience, (if it be in a fundamental Point, and that which generally concerns the whole Body of the Kingdom) that they may not only be diſobeyed but reſiſted too, if forced upon us with Violence; and therefore all that you have ſaid to prove that the Authority to which we are bound to ſubmit, conſiſts not in the Laws, but in the Perſons, tho' acting contrary to Law; is even according to your own way of Reaſoning altogether unconcluſive.

And farther, when you ſay, that it is falſe and abſurd to affirm, that every Illegal is an Authoritative Act which carries no Obligation with it; I ſhall prove, that this Abſurdity lies wholly on your Side. For 1. Legal and Authoritative, are all one in our Law; for that which is not Legal carries no Authority along with it; ſo that Illegal Authority is in plain *Engliſh*, unlawful lawful Power. Nor had K. *Charles* I. any ſuch extravagant Notion of his Royal Authority, (who certainly underſtood his own Power better than you or I,) when he owns in his Declaration to the Long Parliament, Dated from *Newmarket*, 1641, *That the Law is the Meaſure of his Power*; which is as full a Conceſſion of the Thing I affirm as Words can expreſs; for if the Law be the Meaſure of it, then his Royal Power, or Authority (which is all one) is Limited by it. For the Meaſure of any Thing is the Limits or Bounds of the Thing Limited; and when it exceeds thoſe Bounds it is an Illegal, and conſequently an Unauthoritative Act, which carries no Obligation either Active or Paſſive along with it. So likewiſe in the ſaid King's Anſwer to both Houſes concerning the Militia, ſpeaking of the Men by them named to him to be Commiſſioners for it; He thus replyed, If *more Power ſhall be thought fit to be granted to them than by Law is in the Crown it ſelf, his Majeſty holds it reaſonable, that the ſame be by ſome Law firſt veſted in him, with Power to transfer it to thoſe Perſons*, &c. In which Paſſage it is granted, that

J. R. S. P. 15, 16.

all the Power or Authority of the Crown concerning the Militia is by or from the Law, and that the King hath no more Authority than what is veſted in him by the Law of the Land.

2. Your Argument from the Practice of Human Judicatures is alſo very fallacious; for you argue from the bare Abuſe of a Truſt, or Commiſſion, with the Execution of which all Judges and Officers muſt be intruſted, to that which is quite of another Nature, (*viz.*) When the Perſon intruſted acts directly contrary to his Commiſſion, or without any Commiſſion at all; And therefore you are quite out in your Law, when you tell me, that an Abſolute Illegal Judgment is Valid till it be reverſed; for if it be apparently contrary to the known Forms of Law, and Practice of the Kingdom, it is ſo far from being Valid, that though it be put in Execution, it would be look'd upon as Null, and done without any Authority at all: As ſuppoſe the King in Perſon, or any Inferior Judge, ſhould condemn a Man to die, either contrary to the Verdict of his Jury, or without any Jury at all; this is ſo far from being Authoritative, or Valid, that ſuch a Judgment is Void in it ſelf, and thoſe are guilty of Murder, who execute it, and it will need no Writ of Error to reverſe it. But I ſuppoſe by Illegal Judgments, you mean ſuch Judgments which have ſome Error in them, either in Matter of Law, or Form, for which they may be reverſed. I grant, if theſe ſhould not be look'd upon as Valid, and hold good till they are reverſed in a higher Court, there could not be any Judgment given at all, ſince all Human Judicatories whatſoever are ſubject to Errors and Miſtakes; and there is ſure a great deal of Difference between ſuch Actions as are done by that Authority which the Law entruſts them with, though not duly exerciſed, and thoſe violent and illegal Acts, which a Prince, when he perſecutes, and enſlaves his Subjects, performs by his wicked Inſtruments, contrary to all Divine and Human Laws: So that the Validity of ſuch an Erroneous Judgment, is not from the Judge's Perſonal Authority, above the Law, nor from his Miſtake or Ignorance of the Law, but from that high Credit and Authority which the Law hath given to all Courts and Judicial Proceedings; which if they are done in due Form, are to be taken for Law, however unjuſt, and muſt be preſumed to be free from Error till they are reverſed in ſome higher Court.

S. C. R. p. 196. *& deinde.* *M.* But if you pleaſe better to conſider of it, you will find a Neceſſity of owning a Supreme Power in the King beyond all Appeal, or Reſiſtance, and that there muſt be a Perſonal Authority in him, Antecedent and Superior to all Civil Laws; for there can be no Laws without a Law-maker; and there can be no Law-maker unleſs there be one or more Perſons inveſted with the Power of Government; of which, making Laws is one principal Branch; for a Law is nothing elſe but the publick and declared Will and Command of the Law-makers, whether they be a Sovereign Prince, or the People.

Ibidem, 197. *& deinde.* And hence it neceſſarily follows, that a Sovereign Prince does not receive his Authority from the Laws, but Laws receive their Authority from him: And I muſt be ſtill of the ſame Opinion, notwithſtanding *Bracton*'s Words, which you before quoted, *Lex facit Regem*, the Law makes the King; by which I cannot believe that that great Lawyer meant that the King received the Sovereign Power from the Law; for the Law hath no Authority, nor can give any, but what it receives from the King; and then it is a wonderful Riddle, how the King ſhould receive his Authority from the Law. And therefore I muſt ſtick to my former Interpretation, that when he ſays the Law makes the King, that is, it diſtinguiſheth him from a Tyrant; as appears from the Reaſon he gives for it, *i. e. Non eſt enim Rex ubi dominatur voluntas, & non Lex*, he is no King that Governs by his Arbitrary Will, and not by Law; not that he is no Soveraign Prince, but he is a Tyrant and not a King.

And hence it as evidently follows, that the Being of Sovereign Power is independent on Laws; that is, as a Sovereign Prince doth not receive his Sovereign Power from the Law, ſo ſhould he violate the Laws by which he is bound to govern, yet he is not to be reſiſted, much leſs doth he forfeit his Power. 'Tis true he breaks his Faith to God and his Country, but he is a Sovereign Prince ſtill. And therefore it plainly appears that every Illegal Act the King doth, or Illegal Commiſſion that he grants, is not an

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inauthoritative Act, or Commiſſion, but lays on the Subject an Obligation to yield, if not Active, yet a Paſſive Obedience. And in the King's moſt Illegal Acts, tho' they have not the Authority of Laws, yet they have the Authority of Sovereign Power, which is irreſiſtible, and unaccountable. In a word, it doth not become any Man, who can think three Conſequences off, to talk of the Authority of Laws in Derogation to the Authority of Sovereign Power. The Sovereign Power made the Laws, and can repeal them, and diſpenſe with them, and make new Laws. The only Power and Authority of the Laws is in the Power that can make and execute Laws; Sovereign Power is inſeparable from the Perſon of a Sovereign Prince, tho' the Exerciſe of it may be regulated by Laws; and tho' the Prince doth very ill who having conſented to ſuch a Regulation, breaks the Laws, yet when he acts contrary to Law, ſuch Acts carry a Sovereign and irreſiſtible Authority with them, while he continues a Sovereign Prince.

F. I am very well ſatisfy'd, notwithſtanding all you have hitherto ſaid, that the Government of *England* owns no ſuch thing as this Arbitrary Power with which you would inveſt the King; ſince I have already proved at our Fifth Meeting, that the King is not the ſole Legiſlator, and conſequently not the ſole or Supreme Sovereign Power. So likewiſe our Law doth as little underſtand any ſuch thing as a Perſonal Authority in the King, antecedent and ſuperior to all Laws. For ſince God hath now left off making Kings by his own ſpecial Appointment, as he did among the *Jews*, every King muſt either be ſo by the Law or Cuſtom of that Country, or elſe a bare Poſſeſſion of the Throne is ſufficient to make him ſo; and then every Uſurper hath as much Right to a Crown as the moſt lawful Prince; and *Oliver Cromwell* was as Rightful a Prince as King *Charles* II. It is true, the firſt King of any Race could not be inveſted with the Crown by the ſame Law as his Succeſſors are, that is, by an Hereditary Proximity of Blood; yet ſuch a King, whenever he began to be ſo, could have no Legal Right, without the Election, Recognition, or Conſent of the People. And as for an Hereditary Right, that is but a Right by the Law of the Land, or general Conſent of the People, (teſtify'd by an uninterrupted Cuſtom) to entail the Crown on ſuch a Family; ſo that in either Caſe they are Kings by Law. And therefore I conceive it can be only in this Senſe, that *Bracton* ſays, *Lex facit Regem*, i. e. The Law of the Kingdom makes the King; which more plainly appears, by what immediately follows, *attribuat igitur Rex Legi, quod Lex attribuit ei*, viz. *Dominationem, & Poteſtatem*; in which Words nothing ſeems more plain, than that the King ought to yield the like Dominion and Power to the Law, as the Law had given him before; or elſe how could *Bracton* call the Law (in the Place I have already cited,) the King's Superior? And if the King's Title to the Crown were not by Law, How came it to paſs that the *Bruces*, for Example, had a better Title to the Crown of *Scotland* than the *Baliols*? But only that the Laws of *Scotland*, that is, the Conſent of the States of that Kingdom, made them ſo; for otherwiſe any Man that looks upon the Pedigree of both thoſe Families, will ſee, that *Baliol*, according to our Rules of Deſcent, was the nearer of Blood to the laſt King *David* than *Bruce*, and was ſo adjudged, upon a ſolemn Hearing, by our King *Edward* I. in Parliament. And as for *William*, whom you call the Conqueror, under whom all our preſent Kings do claim at this Day, he could have no juſt Right or Title to the Crown of *England* by Conqueſt, but by the Election, or Submiſſion of the People, declared by them at his Coronation. And therefore that Law by which he was made King muſt be precedent, or at leaſt concurrent with his being ſo; and upon whatever Terms or Conditions he then accepted it, his Succeſſors are bound both by the Laws of God and Man to obſerve them. And therefore whatever you have built upon, or would infer from theſe Principles, is of no Force. And if the King be the ſole Sovereign Power, that makes the Laws, repeals them, and diſpenſes with them when he pleaſes; I would be glad to know upon what Grounds ſo many of the Biſhops and Clergy refuſed to read the King's Declaration of Indulgence; ſince certainly if he alone made the Laws, he alſo could diſpenſe with them. But I ſhall ſay no more of theſe Points now, becauſe they are not directly to the Matter in hand.

M. As for what you ſay concerning the King's not being the ſole Supreme Legiſlative Power, I confeſs you and I have diſcourſed long upon that Point; and if I were thoroughly ſatisfy'd of it, I could much eaſier aſſent to what you have ſaid; as alſo if you could prove to me, that the King received his Power from the People, and not from God, the Matter would be yet plainer; for then it would evidently appear, that the People might have reſerved to themſelves ſuch a Right of Reſiſtance as you now maintain; but that they never could have ſuch a Power in *England*, from the Conſtitution of this Monarchy, I need go no farther than your own Inſtance of *William* the Conqueror, who owed all his Right to this Kingdom to the Power of the Sword, and not to any Hereditary Right, much leſs Election, or Confirmation of the People; as I think Dr. *Brady* hath proved beyond diſpute, in his Learned Anſwer to *Argumentum Antinormanicum*. So that ſince we owe all the Rights and Liberties we enjoy to the gracious Conceſſions of our Kings of this *Norman* Race, we ought not in Reaſon or Gratitude to reſiſt them, if they ſhould ſometimes encroach upon what we take to be part of thoſe Liberties ſo granted; no, not if the King (who derives an Indefeaſible Right to the Crown from the Title of the firſt Conqueror) ſhould go about to take away all thoſe Liberties, nay, our very Religion and Property too from us.

But I have not Time to purſue this Argument further now, and therefore ſhall leave it to another Opportunity.

F. As for what you have now ſaid concerning *William* the Firſt's having no Right to the Crown of this Kingdom, but what he owed to his Sword, is falſe in Matter of Fact; it being more than that Prince himſelf ever aſſerted or pretended to. And in the next place, As for your Doctor's proving him an Abſolute Conqueror over the *Engliſh* Nation; ſuppoſing he had done it, (which yet I poſitively deny) yet will not this ſerve to do the Buſineſs for which the Doctor urges it, *viz.* to ſet up an Arbitrary, Irreſiſtible Power in that King, and all his Succeſſors; but may be urged againſt him to a quite contrary Purpoſe, as I ſhall ſhew you more at large, whenever you pleaſe to diſcourſe farther upon that Subject. And as for all thoſe things we call Legal, our Rights and Privileges, which you ſay were wholly granted us by the Charters of his Succeſſors, I have already proved that to be falſe in Matter of Fact at our Fifth Meeting, where I ſhewed you that the *Engliſh* Nation had the ſame Liberties, (as to their Perſons and Properties in their Eſtates, before your pretended Conqueſt) as they enjoyed afterwards; and that *Magna Charta* was but the Recital and Confirmation of our Ancient *Engliſh* Laws, as *Mat. Paris* affirms in the Place I here formerly cited. But admitting theſe Liberties and Privileges you mention had been owing to the Favour and Bounty of former Kings, yet can I ſee no Rebellion or Ingratitude the People of this Nation are guilty of, if they keep and defend them now they have them; but would rather betray a ſervile, baſe Spirit, if we part with them: For ſince it is a Maxim in Law concerning all Grants, as well from the Crown, as private Perſons, that they ought ſo to enure *ut Res magis valeat, quam pereat, i. e.* that the Parties to whom the Grant is made, may not loſe the Benefit of it, whenever the Grantor pleaſes; therefore it is alſo a Rule in ſuch Grants, that they are ſtill to be interpreted in favour of the Grantee againſt the Grantor; and alſo, that the Grantee ſhall not be left without ſome Means or Remedy of keeping and defending his Right againſt the Grantor whenever he goes about to take it away. Nor do I know any Exception there is for the King's Grants, more than thoſe of private Subjects; ſince both *Bracton* and *Fleta* tell us, *non debet eſſe Rege major in Exhibitione Juris, minimus autem eſſe debet in judicio ſuſcipiendo ſi petatur* (which I take to be the true Reading of that Place, and not *peccat*, *parcat*, or *petat*, as divers Copies have it.) That is, as the King is the greateſt in diſtributing of Right or Law to his Subjects, ſo ought he to be no more than the leaſt of them in ſubmitting to right Judgment, if he be petitioned to, and that it be required of him, (either of which Senſes this Word will well bear); but if he abſolutely refuſes to do this, and will take away their Rights and Liberties by Force, and will deny them the Benefit of the Laws, What other Remedy is there left them but a general Reſiſtance? Since otherwiſe the King may alter the Government, and take away all our Legal Rights and Liberties whenever he pleaſes.

Bract. l. c. 8. *Fleta.* l. 1. c. 17.

M. I

'*M.* I confeſs, this Diſpute concerning the Reſiſtance of thoſe commiſſioned by the King, and the King's being the ſole Legiſlator and Original of all the Civil Liberties and Privileges we now enjoy, hath carried us from the main Points in this Queſtion: Pray therefore, ſatisfy me (if you can) thoſe great Objections I have made: Firſt, how this Reſiſtance can conſiſt with that Sacredneſs and Inviolableneſs which you your ſelf ſuppoſe to be due to the King's Perſon: For either this Reſiſtance, in caſe of an Invaſion of our Civil Rights, muſt be made even when the King's Perſon is actually preſent, to back thoſe illegal Commiſſions; or it muſt be forborn, out of that due Reverence and Care of his Royal Perſon which the Law enjoins. If the former, the King's Perſon is in Danger to be deſtroyed, whenever a factious Party is ſtrong enough to riſe in Arms, and oppoſe the King's Commiſſions, upon pretence of their being againſt Law: But if, on the other ſide, this Reſiſtance is not allowable when the King's Perſon is preſent, then all ſuch Reſiſtance will ſignify nothing; ſince as ſoon as ever the King in Perſon ſhall appear in the Field to back his Commiſſions, all your Defenſive Arms (as you call them) muſt be immediately laid down, unleſs they mean to deſtroy the Sacred Perſon of the King: So that take it either way, all Reſiſtance is either illegal, or elſe unpracticable. Secondly, I can as little underſtand (as I told you before) how the Two Houſes of Parliament ſhould renounce all taking up Arms, as well Offenſive as Defenſive, againſt the King for themſelves, and yet ſhould leave a Power in the diffuſive Body of the Nation, nay, in any Part thereof, ſtrong enough to make a Rebellion, which they thought unlawful to exerciſe themſelves. Laſtly, By what Legal Authority the People, or any Part of it, can juſtify the taking up even Defenſive Arms; ſince you your ſelf acknowledge, that no Arms can be taken up regularly, but by the King's Authority: And you have alſo diſclaimed all taking up of Arms by his Authority againſt his Perſon, or againſt thoſe Commiſſioned by virtue of ſuch Authority; tho' I confeſs, you except the Caſes of Self-defence, and in Maintenance of the Law; yet I cannot find thoſe Exceptions allowed of in any of our Law-Books, either Ancient or Modern.

F. I hope to give you ſuch Satisfaction to every one of theſe Objections you have made, as may ſerve any indifferent Perſon. Therefore, as to the firſt, concerning the Sacredneſs of the King's Perſon, which I allow of as well as you, we muſt, in the firſt place, diſtinguiſh between ſuch Commiſſions as the King iſſues by Colour of Law, when the Judges, for Example, had given their Opinions in the Caſe of Ship-Money: For they being the ſole Interpreters of the Law in the Intervals of Parliament, I do acknowledge that their Determinations are not to be oppoſed by Force, but legally reverſed when the next Parliament meets; and they are then to anſwer in Parliament for their falſe Interpretations and Opinions, as *Treſilian* and his Companions did in the 11th of *Richard* the IId. and as the Ten Judges did upon the Two Houſes Declaration againſt Ship-Money, and their Impeachment thereupon. Thus, though Mr. *Hampden* refuſed to pay Ship-Money when demanded of him, and rather choſe to lie in Priſon than pay it; yet it had been downright Rebellion, in caſe any Reſiſtance had been made by him againſt the levying of it: But had this Tax been laid by the King's ſole Power without ſuch Colour of Law, I doubt not but Reſiſtance might have been made even againſt thoſe that were Commiſſioned by him to levy it; and if any one Town or Hundred were not ſtrong enough to ſeize ſuch Officers as preſumed thus to levy it againſt Law, the *Sheriffs* of every County in *England* might have raiſed the *Poſſe Comitatus*, and ſeized all ſuch Offenders, and carried them to Goal; ſince the King's Commiſſions never did, nor can indemnify the Perſons ſo Commiſſioned, in caſe the Thing they were about to execute was contrary to Law. And for this, I need go no farther than the Old *Mirror of Juſtices*, which is owned for good Law at this Day; which, ſpeaking of Robbery, and the ſeveral Kinds thereof, has this Paſſage, which I ſhall here render out of the old *French* Law: *Into this Offence* (*viz.* Robbery) *all thoſe fall, that take other Mens Goods by Commandment of the King, or any great Lord, without the Owner's Conſent.* Where you ſee there is no Difference at all made between thoſe that took away other Mens Goods by the Command of the King, or any other; but it was Robbery in all of them alike, and conſequently the Actors might be alike ſeized and puniſhed as Robbers. The ſame is alſo allowed by the Statute of the 20th of *Henry* the VIth, whereby the King's Purveyors are forbid to take any thing to the Value of 40*s.* or under, without

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without ready Payment in hand, of any Perſon; and that it then ſhould be lawful for every one of the King's Liege-People to retain their Goods and Chattels, and to reſiſt ſuch Purveyors and Buyers. So likewiſe the laſt Clauſe in this Oath you ſo much inſiſt upon, *viz. in purſuance of ſuch Military Commiſſions*, ſeems to reſtrain to ſuch Commiſſions as were granted by the King's Authority; that is, according to Law, and no other.

So that you ſee, by the Old Law of *England*, the King's Commiſſion did not render any Man irreſiſtible, unleſs he executed it according to Law: Since the Conſtable of each Town might raiſe the Inhabitants thereof, to ſeize ſuch Wrong-doers; and if they were not ſtrong enough, the High-Conſtable of the Hundred might raiſe the whole Hundred; and in caſe they were not ſufficient, the High-Conſtable might crave Aid of the Sheriff, and aſſemble all the ſeveral Hundreds of the County till theſe Malefactors were ſeized. So that as long as there were no ſtanding Forces kept up in the Nation, (as I have ſhewn you there was not till the Reign of King *Charles* the IId.) there could never be any Claſhing between the King's Civil and Military Commiſſions. And this is one great Reaſon why no King of *England*, ſince the Act *de Tallagio non concedendo*, was ſo hardy as to iſſue any Commiſſions to levy Money without Colour of Law; becauſe they knew they were void in themſelves, and conſequently would be reſiſted by the whole Nation. So that this would not have been taking up Arms by the King's Authority againſt thoſe Commiſſioned by him, but only in order to bring thoſe to Juſtice who had not any Commiſſions at all to do what they did; the Law taking no Cognizance at all of the King's Perſonal Commiſſions, when abſolutely againſt Law.

Nor, if the King had joined his own Preſence to ſuch illegal Commiſſions, would it have mended the Matter, or rendred theſe Robbers of other Men's Goods any more irreſiſtible, than they were before; ſince the King can give no Man Authority to do that, which he has not Power to do himſelf: And therefore ſince his ſingle Perſon may be reſiſted, in caſe he go about to Raviſh, Rob, or Murder People; then ſure his joining himſelf with ſuch Men, tho' never ſo numerous, can never make him more irreſiſtible than he was; unleſs you will ſuppoſe, that the King may not rob or commit Murder with a few without Reſiſtance, but may juſtify the doing of it with an Army: And if ſo, pray tell me, what Number they muſt be to render the King, and all thoſe with him, thus irreſiſtible? And therefore it is no wonder, if our Law has made no expreſs Proviſion for reſiſting the King's Perſon, ſince it had ſo high a Regard for his Honour, as not to ſuppoſe he could be guilty of making War upon his People: But if the King ſhall be among ſuch wrong Doers, either by Force or Fraud, the Caſe will be otherwiſe. Thus, when King *Edward* and *Richard* the IId. joined their own Preſence to the illegal Actions of the Two *Spencers*, and *Robert de Vere*, Duke of *Ireland*; yet the Nobility and People took no notice of that, but proſecuted them, notwithſtanding the King's perſonal joining himſelf with them: And *Thomas* Earl of *Lancaſter*, tho' he had the worſt of it in ſuch a War, and was taken and executed, yet was his Attainder reverſed in Parliament, as I have already ſaid, and his Quarrel with the *Spencers* declared to be good and juſt. As the like Reſiſtance was alſo declared to have been for the Safety of the King and Safeguard of the Realm, in the Parliament of the 11th of *Richard* the IId. wherein the Duke of *Ireland*, and the reſt of his Faction, were condemned, as I have already ſhewn you: And tho' I grant, that in ſuch a Diviſion between the King and his People, his Perſon may run a great Hazard; yet it is his own Fault, and not theirs, if it ſo fall out; and they are not to loſe their Lives, Liberties and Properties, in caſe the King will fully join himſelf with Murderers or Robbers, ſince this is not to reſiſt Royal Authority, but illegal Force, without any Authority at all; and if he will thus expoſe himſelf to the Mercy of blind Bullets, Charge is to be given to all not to kill him wilfully or wittingly, ſince we are never to deſpair of his Repentance, till he abſolutely renounces all Reconciliation with his People: And thus, even in the midſt of ſuch a Reſiſtance, the King's Perſon may be as ſafe as he can be in ſuch Circumſtances, though not ſo ſafe as if he were in his own Palace. But if an Army of wicked and lawleſs Men muſt not be reſiſted, becauſe they have got the King's Perſon on their ſide; then Prince *Edward* (afterwards King *Edward* the Iſt.) could not have juſtified his fighting with *Simon Montford*, and thoſe of his Faction, who had, as you your ſelf acknowledged,

got the Perſon of King *Henry* III. into their Power, and acted all things in his Name, and by his ſeeming Authority; as the Hiſtorians of thoſe Times expreſly tell us; and the King being in *Montfort*'s Army at the Battel of *Eveſham*, was in great Danger, being then wounded in the Neck with an Arrow: So that if this Oath had been then to be taken in this Senſe, this reſcuing of the King by his own Son out of the Hands of theſe wicked Counſellors, had been taking up Arms by his Authority againſt his Perſon.

M. Pray give me Leave to anſwer this Inſtance you have now brought, becauſe I think it does rather make againſt, than for your Opinion. I grant Prince *Edward* might well juſtify his fighting with *Simon Montfort*, tho' he had the King's Perſon then in his Power, becauſe the Prince very well knew that his Father was carried about with them as a Priſoner againſt his Will; and therefore ought to releaſe him, tho' with ſome Hazard to his Perſon; ſince it could not be otherwiſe brought about. But ſure there is a great deal of Difference between fighting to releaſe my Prince, when made a Priſoner againſt his will, and fighting againſt him to take him away from Evil Counſellors, whether he will or not; as the Long Parliament did againſt King *Charles* I. tho' they knew he was in the Head of his Army with his own Conſent; and this was ſure taking up Arms by the King's Authority againſt his Perſon, and is that which is to be expreſly diſclaimed by this Oath; and will be alſo treaſonable, if done in any Caſe whatſoever, where the King ſhall think fit to be at the Head of his Forces, whether the Thing be lawful or unlawful for which they are raiſed.

F. Well then, it ſeems the Fear of endangering the King's Perſon is nothing, if the End for which it be done be lawful. And why it may not hold in other Caſes as well as this, I can ſee no Reaſon. I grant, that what the Parliament did was unlawful, becauſe the Occaſion of the War began on their ſide, as it was then ſaid; but ſuppoſing the King made War upon the People, I doubt not but the Caſe had been otherwiſe. And for Proof of this, pray give me Leave to put you a Caſe which may well happen, now we have a Standing Army diſtinct from the Militia: Suppoſe that in a Suit with a great Favourite of the King's, a Man recovers a Houſe and Lands againſt him by a Judgment at Law, and he alſo by Courſe of Law put into Poſſeſſion thereof by the Sheriff; afterwards the King's Commiſſion is obtained by the Intereſt of this Favourite, to command an Officer and ſome Companies of Soldiers of the Standing Army, to take Poſſeſſion of this Houſe, and deliver it back to the Perſon who firſt had it. The Man in Poſſeſſion being a ſtout and powerful Perſon in his Country, hearing of it, reſolves to maintain the Poſſeſſion of his Houſe according to Law; and therefore gets in good Store of his Tenants and Neighbours to defend it. The Officer comes with his Soldiers and ſummons the Houſe: They within refuſe to yield up the Poſſeſſion; whereupon an Aſſault enſues, in which a great many are killed. The Man in Poſſeſſion is by the King's Command indicted for Treaſon or Murder, for fighting againſt thoſe commiſſion'd by the King. Now, pray tell me, Whether the Judges ought, according to their Oaths, to direct the Jury to find this Man, and thoſe of his Party, guilty of the Crimes above-mention'd, or not; and whether the Officer and his Soldiers are not rather to anſwer for this Offence.

M. Truly, I cannot deny but this Military Commiſſion to put a Man out of his Freehold is Illegal, and conſequently void, and ſo may be reſiſted; ſince I know the Law ſays, That a Man's Houſe is his Caſtle, and he may juſtify the Defence of it againſt all Subjects whatſoever: But what is this to reſiſting the King's Perſon, who was not there; for if he had, I doubt not but this Perſon ought to deliver it up to the King, rather than endanger his Majeſty's Sacred Perſon: Nor is this Reſiſtance conſiderable, it being only in a particular Caſe, which can no way by a general Rebellion alter this Government over the whole Nation.

F. You ſpeak agreeable to your own Principles. Well, but ſuppoſe the King ſhould be perſuaded by ſome very ill Men about him to play this or the like Trick, whenever he had a Mind to favour one Party more than another, and ſo ſhould hinder the Execution of the Law whenever he pleaſed; Can you think the Nation would long endure this, without any Reſiſtance? Or ſuppoſe, to make the Caſe more general, the King ſhould undertake to lay a Tax upon the whole Nation, without Conſent of Parliament, and fearing it ſhould not be levyed, ſhould reſolve to do it by his Officers and Soldiers of his Standing Army; and

leſt

leſt they ſhould be reſiſted, ſhould march with them in Perſon from one County throughout to another to ſee the Money raiſed: Do you think the whole Nation, out of pure Deference to the King's Perſon, were bound to permit him to do whatever he pleaſed, and let the Soldiers take this Tax, which they were certainly not obliged to pay, had he not been perſonally there?

M. Yes, I am of that Opinion that they ought; for it were better to pay it, than that a Civil War ſhould happen about it, in which the King's Perſon, as well as the Government, may be deſtroy'd.

F. I ſee you are of this Opinion, becauſe you fancy that the whole Government conſiſts in the King's Perſon alone, which it does not; but in the Legiſlative Power, which is not in the King alone, but in the King together with the Lords and Commons aſſembled in Parliament: Therefore you are miſtaken in ſuppoſing that this Reſiſtance muſt needs alter the Frame of the Government, ſince it is undertaken to maintain the fundamental Conſtitution of it. For if the King may take what Money he pleaſes from the People, and make what Laws he will without the Parliament, and without ſuppoſing it lawful to reſiſt him if he does, the Fundamental Conſtitution of this Kingdom will be but a Jeſt, conſidering how light ſome Princes make of their moſt Solemn Declarations to their People; nay, their very Coronation-Oaths now-adays. And it is a ſtrange Paradox, that one Man may defend his Life and Property againſt the King's ſingle Perſon, in caſe he go about to rob or murder him; and yet that a whole Nation ſhould not have the like Right; and that a Prince may not rob or murder Men by himſelf, yet may do it without any Reſiſtance, in caſe he can raiſe an Army to back him.

M. Let what will happen, I am for underſtanding this Oath and Declaration in the ſtrict literal Senſe; which you, by your falſe Gloſſes, go about to deſtroy; therefore to tell you plainly my Mind, I think, neither one ſingle Perſon, nor yet the whole Nation, can juſtify Reſiſtance of the King's Perſon; no, tho' he ſhould go about to rob or murder me, it were better I were killed, or loſt all I had, than that the ſacred Blood of my Prince ſhould be ſhed by my Hands. Since the whole Parliament have on behalf of the People actually renounced all defenſive Arms againſt the King, (by which I ſuppoſe they mean all defenſive Arms againſt his Perſon.) Nor have you as yet anſwered my two laſt Objections, concerning that Renunciation of the Two Houſes, and the want of a competent Authority to raiſe the Arms of the whole Nation, in caſe of that which you call a General Invaſion of Mens Religion, Liberties, and Properties, if ever any ſuch thing ſhould happen, as it is not likely it ever will.

F. Your Principles and mine are ſo diametrically oppoſite, that it's no wonder we may draw quite contrary Concluſions; for whereas you ſuppoſe that Nations were made for Princes to govern and diſpoſe of at their Pleaſure, without any Reſiſtance on the Peoples ſide, let them do what they will; I ſuppoſe that Princes are made for the common Good of their People; and where their Happineſs and Preſervation do not interfere, ought inviolably to be preſerved; but when through the Folly, Negligence, or Tyranny of Princes, that which was ordained for their Protection, proves their Ruin and Deſtruction; I think the Preſervation of the Prince's Perſon ought to give place to the Publick Good; and better that he, than that the whole Nation ſhould periſh. Which tho' it was the Opinion of *Caiaphas*, in relation to our Saviour, yet it is ſo well approved of, that it is ſaid by the Evangeliſt St. *John*, that he ſpake not that of himſelf, but being High-Prieſt that Year, he propheſy'd. For there may be a Civil Government without a King, but there can be no King without a People. Of this Opinion our *Engliſh* Anceſtors always were; who, though they often reſiſted, and ſometimes depoſed their Kings, they ſtill maintained Kingly Government, tho' with the Change of the Perſon. And if it fail'd in the laſt Civil War, it was becauſe it was at laſt managed by a Faction of Men of quite different Principles both in Religion and Politicks, and not by the Nobility and Gentry of the Nation, whoſe Intereſt it was, and ever will be, to maintain the ancient Government of a limited Monarchy, without falling into a Commonwealth, or giving up their juſt Rights and Liberties to an Arbitrary Power.

But

But to answer the rest of your Objections, which, if what I have already laid down be Law and Reason too, may be easily done. As to the first Objection, the Two Houses might very well renounce the Power of making any War offensive or defensive against the King, and yet leave the Right of Resistance for Self-Defence and Preservation to the whole Nation in general; since the former was necessary, unless they would have asserted a Right in themselves of sitting whether the King would or not, and waging a War against him whenever they pleased, after he had actually dissolved them; which would be to set up Two equal absolute Powers at once in the Kingdom. But that they did not renounce it for the whole Kingdom, is plain; for though by the Statute of the 12th of *Charles* II. they disclaim all coercive Power over the King's Person for themselves and the People, either collectively or representatively, yet do they neither there nor in any of these Acts for the Militia, renounce all defensive Arms for the Defence of their Religion, Liberties, and Properties; there being a great deal of Difference between such a Defence, and a coercive Power over the King, as I have already sufficiently proved; nor indeed was it in the Power of the Parliament to have done it if they would, since they are but Trustees for the People to preserve their just Rights, and had no Power wholly to give up their Religion, Lives and Properties to the King's Mercy. So that this Renunciation of all defensive Arms on the Behalf of the whole People, had been absolutely void in it self: And since it would have render'd the Legal Constitution of the Government of this Kingdom absolutely precarious, if notwithstanding the Illegality of the King's Commissions, and their being void if granted to illegal Purposes, the King's Presence shall render it downright Treason to resist them. And if this be so, the last Difficulty will be easily answered, *viz.* By what Authority or Commission the People may make this general Resistance? To this I say, that in the first Place all Commissions granted to Persons uncapable by Law to take them, or for illegal Purposes, are to be supposed to be issued contrary to the King's Will and Knowledge, and therefore are to be look'd upon as void in Law; and consequently the Persons not to be commissioned at all, and so may be resisted by the King's legal Officers all over *England*, as I have already proved: But if once the King should countenance and abet such Robbers by his own personal Presence, this Resistance may then be made, and justified by the whole Nation, not by the King's Authority against his Person, but by another higher and precedent Right, *viz.* the Right of Self-Defence, and the Common-Safety of the whole Nation; which the People must have reserved to themselves at the first Institution of the Government, or else all Monarchies would be alike, and their would be no difference at all between absolute and limited Kingdoms.

M. I shall not trouble my self about other Kingdoms, but this much I firmly believe, that our Kings are absolute Monarchs, notwithstanding they have limited themselves by Law to the Manner of their Administration of these grand Essentials of Government, the making of Laws, and raising of Money: So that since the Supremacy of the Government is still in themselves as God's Vicegerents here on Earth, and not as the People's Deputies, I cannot but still understand this Oath in the strict litteral Sense in which I am confident this Parliament meant it; and therefore since they have expressly declared the Law to be so, I will not be wiser than the Law; especially since it is most agreeable to the Scriptures, and the known Doctrine of the Church of *England*, that the King's Person is not only unaccountable but irresistible too upon any Pretence whatsoever; and I think I am able to shew you, that it is much better for this Nation, or any other of a like Constitution, to suffer the worst that may happen from the ill Government, nay Tyranny of our Kings, than to involve themselves in Blood and Confusion by Rebellion and Civil Wars, as often as the People shall judge, though never so falsly, that their fundamental Rights and Privileges are forcibly invaded by the King.

F. I think I have very expressly proved at our 5th Meeting, and that from undoubted Testimonies from our ancient Histories, and Writers of the Laws of *England*, as also from the whole constant Tenor of the Statute Law of this Nation, That the Kings of *England* are not limited by their own Concessions, in the Manner of the Administration of their Sovereign Power, but

from the first Constitution of the Government: And if the King be not the sole Supreme Legislative Power, I care not what some Divines have writ to the contrary; and since it is a Law-Question, the supreme Authority alone ought to decide it. And therefore it is no Matter in this Case, what the Scriptures say, nor yet the Church of *England*; the former hath not, and the latter cannot determine what is the legal Constitution of the Government in this Nation, and where the supreme Power resides. And therefore suppose it to have been the Intent of this Parliament, never so much to bar all Resistance of the King's Person in any Case whatsoever, yet I am sure it was not in their Power to do Things absolutely inconsistent and contradictory in themselves, as they must have done had they made the Persons of all Officers, however commissioned by the King, absolutely irresistible; and much more if they had indued the King's Presence with an absolute Power, in Order to countenance their Commission, the most violent and illegal Action; and yet have supposed they had thereby altered nothing in the Constitution of the Government, though they had rendred it instead of a limited, an absolute despotick Monarchy, which as I am not yet convinced it was in their Will, so neither was it in their Power to grant if they would: And therefore as I do not desire to be wiser than the Law, so I cannot allow this to be any Law at all in the Sense you would put upon it. So that make the most of it, this was but the unwary Declaration of a Parliament of very young or biassed Men, not long after the King's coming in, who through the great Abhorrence they had of the late Civil War raised by the Parliament, under Colour of the King's Authority, were drawn in before they were aware, to be a little too free in their Expressions, not considering the Consequences that might follow: But when this fond Fit was over, and that a standing Army had been raised in *England* under pretence of the *Dutch* War, and that the King had by his Declaration of Indulgence made some Approaches to an Arbitrary Power, and in order thereunto, would in that very Parliament in 1675. have imposed this very Oath or Test, not only upon those who were to take it before, but upon all Peers and Parliament Men before ever they sat in the Two Houses, as also upon all Officers in Church and State, to the very Justices of Peace; so that the Disguise being now seen through, it made divers of the Peers, even those of greatest Loyalty and Wisdom, stiffly to oppose the laying this Test upon all the Clergy, Nobility and Gentry of the whole Nation, as it was then the Design of the Court-Party to have done: Which vigorous Opposition, tho' in the smaller Number, yet met with such good Success, that the Bishops and Lords of the contrary Opinion, could not then carry it; and the Eyes of the whole Nation were afterwards so much opened, that the King durst never offer this Test any more to either of the Two Houses. So that if you will but consider this Matter of Fact, how this Test was first obtained; and how afterwards, when it was thought to be intended to set up Arbitrary Power, was also as vigorously opposed by them; and their being sensible that the Parliament had gone too far already in doing what they had done; I think none can take this Oath in your Sense, except those Clergymen, who will allow none to be of their Church, but those who are for this Passive Obedience; according to their prejudicate Notions of Loyalty, or else some few mercenary Lawyers, who, in Hopes of Preferment, (which they can never otherwise obtain) would interpret this Oath in such a Sense as would make us all Papists and Slaves too, whenever the King has a mind to it. Now which of these Extremes are worst, that the People should judge for themselves (tho' perhaps erroneously) when the King, or those acting by his illegal Commissions, shall violently assault them in their Religion, Lives, Liberties and Estates, and thereupon they make Resistance with one Consent, when they find themselves brought to this Extremity; or else that the King should be thus invested with an irresistible Power of doing whatever he pleased with us; I durst leave to any indifferent Person to judge.

M. I confess you have told me more concerning the History of this Oath, than ever I knew before; but let the legal Sense of it be what it will, and setting aside the Precepts in Scripture for absolute Submission without any Resistance, I think I am able to prove from your own grand Topick of the common Good and Preservation of Mankind; that it is much better to submit to the worst, and greatest Tyrant that ever was, than to resist him, if he be our lawful Prince;

for

for if you conſider what is the Subject of all Human Happineſs and Contentment, it is certainly Life; now what Tyrant ever in his whole Reign deſtroyed ſo many Mens Lives by Force, or unjuſt Proſecutions, as a Civil War, if carried on with Violence and Animoſity does in a Year's Time? So vaſt a Difference there is between the Evils of Tyranny and Rebellion, and ſo much is the Remedy worſe than the Diſeaſe; the Cruelty of a Tyrant (ſays one) is like a Clap of Thunder, it ſtrikes with great Terror; but Civil War is like an Inundation, it ſweeps away all before it, without Noiſe: Thus one Man brought to the Scaffold by the Arbitrary Command of a Tyrant, makes more Noiſe than Ten Thouſand killed in the Field in a Civil War; but that does not make it the leſs, but the greater Evil, while we are made willing to deſtroy our ſelves, and do it more effectually in one Day, than the bloodieſt Tyrant could find in his Heart to do in his whole Reign: All the Men put to Death by the Arbitrary Commands of Tyrants ſince the beginning of the World, in all the Kingdoms of it, will not amount to half the Number of thoſe who have periſhed in the *Roman*, or *Engliſh* Civil Wars. So much ſafer are we in God's Hands than in our own, and in theirs under whom God hath placed us. And though he often makes them like the Sun and Sea, (tho' highly uſeful in themſelves) Scourges for our Sins, yet he has promiſed to keep their Hearts in his Hand, and to turn them as ſeemeth beſt unto him; we have more Promiſes of Safety there, than when we are delivered over to the Beaſts of the People, whoſe Madneſs *David* compares to the Raging of the Sea.

Vid. An Anſwer to Dr. *King's* State of the Proteſtants in *Ireland*, p. 32, 35, 36.

Pſal. 98. 30.

In ſhort, The ſtrict Reſtraint of the People by Government, is their trueſt Liberty and Freedom; ſince if they were at Liberty from Government, they would be expoſed to Combat one another; which would be worſe than the greateſt Slavery in the World: The great Miſtake is in the fooliſh Notion we have of Liberty, which generally is thought to conſiſt in being free from the Laſh of Government, as School-boys from their Maſter, and proves in the Conſequence only a Liberty to deſtroy each other; and yet it is for ſuch a Liberty as this, that Men moſt commonly begin Civil Wars, and fall a cutting of each others Throats. Therefore, though I grant it were much better for all Princes to let their Subjects live happily, and enjoy a competent Share of Eaſe and Plenty; yet on the other Side, if they will not permit them ſo to do, but will tyrannically oppreſs them, it were much better for them to ſit down contented with Poverty, nay, Slavery it ſelf, rather than to deſtroy ſo great Part of a Nation, as may be loſt in a Civil War, whenever it begins. Thus even the Poet *Lucan*, though of *Cato*'s Party, reckoning up the Miſeries of the Civil Wars of *Rome*, which were all for Liberty, as if envying the happy Condition of thoſe who lived under abſolute Tyrants, cries out,

Fœlices Arabes, Medioq; Æaque Tellus,
Quos ſub perpetuis tenuerunt Fata Tyrannis.

I could give you Inſtances of the Truth of this in moſt Nations, enough to make a Hiſtory: And if ſuch a Hiſtory were written, of the Miſchiefs of this falſe and pretended Liberty, and Good of the People, I durſt undertake the Compariſon, that more viſible Miſchiefs come upon the People, more Deſtruction of the Publick Good, and greater Loſs of Liberty and Property by this one Method, than by all the Tyranny and Violence of Mankind put together; and conſequently, that there is no Compariſon 'twixt the Evils of Tyranny, and of a Civil War for Publick Good; and that the Miſchiefs on this Pretence of Publick Good, are infinitely leſs tolerable, and a more Univerſal Ruin to the People, than any Tyranny of lawful Governors, that ever was in the World; whereas this is by many Degrees the greateſt, and moſt lawleſs Tyranny, and always brings greater Miſchief along with it, ſuch as Confuſion, Rapine, Violence, Contempt of all Laws and Legal Eſtabliſhments, with more intolerable Evils of all Sorts, than thoſe it pretends to remedy.

But of all Pretences for Rebellion, Religion is the moſt ridiculous; ſince a Man's Religion can never be taken from him, or a falſe one impoſed upon him, whether he will or not; and alſo becauſe a Civil War introduces greater Immorality, and more looſens the Reins of Diſcipline, and is more contrary to the Spirit of true Religion, than any other Thing in the World: True Religion is

not propagated by the Sword, it is a ſmall ſtill Voice that cannot be heard in War; War confounds it, and debauches it. The moſt profligate, and licentious Court, bears no Proportion in Wickedneſs to the Lewdneſs, Blaſphemy, and Contempt of all that is Sacred, which reigns and overflows in Camps. It was an old and true Saying, *Nulla fides, Pietaſq; viris, qui Caſtra ſequuntur.*

F. I ſee when neither the Scripture nor the Law can juſtify your abſurd Doctrine of Paſſive Obedience; then you fly back to your old Topick the Law of Nature, and common Good of Mankind: I allow your Principles, but not the Deductions you draw from thence, which are indeed but Paralogiſms, as I will ſhew you by and by; but I ſee there is nothing ſo falſe and abſurd, which Prejudice and Education will not make Men ſwallow: I confeſs, you have made a long and ingenious Harangue in Commendation of the Benefits of Tyranny and Slavery; which had you done only for an Exerciſe of your Wit, I ſhould have ranked it with *Cardan*'s Panegyrick of *Nero*, and in Praiſe of the Gout; but if you vent ſuch Notions in good earneſt, I cannot forbear ſhewing you the Abſurdity of them.

Firſt, therefore, admitting what you ſay for Truth, that a Civil War does deſtroy more Men in one Battel, than the greateſt Tyrant hath ever done in his whole Reign; Is this an Argument that no Man may defend either his Life or Liberty againſt Arbitrary Power? If this were true Reaſon, it were the greateſt Folly in the World for the *Poles*, or any other Nation that are at Wars with the *Tartars*, ever to reſiſt them; for their Emiſſaries might thus make uſe of your Argument to make them ſubmit to them: Life is the only State of Happineſs in this World, and without which nothing can be enjoyed: It is therefore better for you to be made Slaves than to venture a Battel; for in the Fight God knows how many of you may be deſtroyed; whereas, if you quietly ſubmit, we promiſe to hurt none of you, we will only carry you away, and ſell you for Slaves, and ſure Slavery is better than Death; for even Slaves enjoy a great many Comforts of Life, though with ſome Hardſhips; and you may be redeemed again, or make your Eſcape; but Life once loſt can never be recovered. The ſame Argument a Tyrant may uſe for the Exerciſe of his Arbitrary Power over Mens Lives; that he will not (nay, cannot) deſtroy the whole Nation, but only uſe them as Butchers do their Sheep cull out the fatteſt, and let the poor Ones live, thrive and grow fat, till they are likewiſe ready for the Knife. This perhaps may be a proper Life for thoſe Beaſts that cannot live without Man's Protection; but what Man of any Courage or Senſe, would be willing to live under a Government where his Poverty was to be his only Protection? Who would not venture his Life in one brisk Battel, rather than live in ſuch a vile and ſlaviſh Condition? And who would not rather argue thus; It is great odds, if among ſo many Thouſands, I am the Perſon ordained for Death; or if I am, I may perhaps purchaſe Victory for my Countrymen, and Liberty for my Poſterity; but let the worſt happen, I venture my Life for the Publick Good; and it is better once to die, than always to live in fear.

But if the Calculation of the Number of Men's Lives that may be loſt in the Recovery, or maintaining any Right whatever, ſhould be the only Rule to render War either reaſonable, or lawful; I doubt whether moſt of the Wars Princes make for ſmall Territories, or Punctilio's of Honour; (as lowering the Flag, for Example) nay, even for the Recovery of their Crowns, when unjuſtly detained or taken from them, can upon your Principle ever juſtify either Princes in Conſcience to make ſuch Wars, or oblige Subjects in Prudence, (according to your Rule of the Publick Good) to fight in ſuch Quarrels; ſince none of them but often coſt more Lives to defend, or regain them, if loſt, than the Things are worth that the Princes of the World uſually make War about, againſt each other.

But if you tell me, that Men are bound by the Law of God, and of their Country to aſſiſt their Prince in any Wars he ſhall Command them, without enquiring into the Conſequences of it; and let what will happen as to the loſs of Men's Lives, Eſtates or Liberties, that we are likewiſe to obey and ſubmit to lawful Princes; becauſe, let them tyrannize, enſlave or deſtroy us never ſo much, yet God has put us into their Hands; and we are ſafe in God's Hands whilſt we are in theirs: This is all a meer Falacy, for what is this to your main Argument from the Deſtruction of Mankind? For, if ſo many Men are to loſe their Lives

in the War, what Difference is it as to them, whether the War be made by a lawful or unlawful Power? It is ſtill upon this Principle unlawful to be made, and conſequently unlawful to be fought for. And if you once grant that Princes may tyrannize without Reſiſtance, kill or enſlave any of their Subjects; What Difference is it, as to the People that are to ſuffer it, whether he be a lawful Prince, or a Tyrant or Uſurper that does it? For as for being delivered by God into the Hands of a lawful Prince to be dealt withal as he ſhall think good, it is all meer Jargon: Pray prove to me (if you can) that whilſt a Prince thus tyrannizes, oppreſſes, and enſlaves his People, that God ever thus deliver'd the People into his Hand for that Deſign; or that whilſt he does ſo, he acts as God's Miniſter. This I have urged you to prove at our Fourth Meeting; but ſince you could not do it, I take the Caſe for deſperate.

But to anſwer your Compariſons of the Sun and Sea, to which you compare lawful Princes that turn Tyrants; they are as eaſily retorted upon you: If the Rays of the Sun are too hot, we may reſiſt or avoid them, and put on thicker Cloaths; or ſet up Shelters to defend our ſelves from them: The like we may ſay of his malignant Influences or Effects upon Men's Bodies, could there be any Means found out as eaſily to avoid them. So likewiſe for the Sea; ſuppoſe the breaking in of it upon any Countrey to be ſent by God for their Sins, you will not ſay it is unlawful for the People to make Banks or Dikes, or uſe any other natural Means to keep it out, or to drain it away. And the Caſe is the ſame as to Tyranny; for if Reſiſtance be as natural a Means againſt it, as theſe I have mentioned are againſt the too violent Heat of the Sun, or breaking in of the Sea, I cannot ſee why we may not as lawfully exerciſe it. But ſince we are talking of Waters, this puts me in mind of the Place you have now cited out of *Proverbs*, *That the Heart of the King is in the Hand of the Lord*; which without doubt is a great Truth; but then you ſhould have added what immediately follows; *as the Rivers of Waters he turneth it whitherſoever he will.* Now, How does God turn Rivers of Waters? It is not by any ſupernatural Means, but either by a ſtrong Wind, or elſe by the Hands of Men. Therefore *Solomon*'s Compariſon of God's turning the Hearts of Kings like Waters, is but an Alluſion to the Cuſtom of thoſe *Eaſtern* Countries, that as a Gardiner draws the Streams of Water through the Trenches he cuts, into what Part of the Garden he thinks good; ſo doth God turn the Hearts of Princes to act, or do quite contrary to their firſt Intentions; nay, to what they have actually done before. But, How is this performed? It is only as he makes uſe of the Gardiner to turn the Streams of Water: It is wholly by human Means, ſuch as Advice of good and wiſe Counſellors, and a prudent Conſideration upon it; to which alſo may be added, the Reſiſtance of their Subjects, when after all Remonſtrances and Intreaties to the contrary, Princes ſtill go on outragiouſly to oppreſs them; when they ſee they will no longer bear it, and find themſelves engaged in a troubleſome War with them, they then ſee their Error, and ſend to their Subjects and offer them Terms of Peace. Thus divers of our Kings Hearts were turned; when they ſaw the Nation would all, as one Man, reſiſt their tyrannical Arbitrary Proceedings, they came to Terms with them, and granted them *Magna Charta*, and other good Laws, for the Security of their juſt Rights and Liberties. But as for what you ſay of our being ſafe in the Hands of Tyrants, as being in God's Hands; I grant we are ſtill in God's Hands even when we fall under the Power of Thieves and Robbers. But is our Safety then ſo great, as when we are out of their Hands? Or, may we not get from them by Force, if we are able? Eſpecially if what *Bracton* tells us be true, in theſe Words in his Third Book, *Exercere igitur debet Rex poteſtatem juris ſicut Dei miniſter, & Vicarius in Terrâ, quia illa poteſtas ſolius Dei eſt; poteſtas autem injuriæ Diaboli non Dei, & cujus horum operum facit Rex, ejus miniſter erit cujus horum operum facit, igitur dum facit juſtitias vicarius eſt Regis æterni, miniſter autem Diaboli cum declinet ad injuriam.* Now, pray tell me, if the King can thus ceaſe to be God's Lieutenant, and become the Devil's Officer, whether we can properly be ſaid to be under the Power ordained by God, or that we can be very ſafe in ſuch Hands, I cannot very well ſee.

Vid. Dr. Patrick's *Paraphraſe and Annotations on this Text.*

Cap. 1. f. 107.

As for unneceſſary Wars, undertaken without any ſuch Cauſe, for meer Pretences of Liberty and the publick Good; and which may have ſometimes cauſed many more Miſchiefs and Inconveniences than thoſe they pretended to cure; does it therefore follow, that no Wars, tho' againſt inſupportable Tyranny, and for Self-defence, have never been, nor may be, undertaken by any Nation in the World;

and

and that the State they are in, after ſuch a War, is always much worſe than it was before? Which is notoriouſly falſe, as you may ſee by ſo many Inſtances I have given you from our own Hiſtories; as I could alſo ſhew you from other Countries; ſuch as the *Switzers* and *Dutch*, who have by defending their Liberties when unjuſtly oppreſſed, brought themſelves into a State of Plenty, Liberty, and Safety. And therefore, notwithſtanding your making ſo light of Men's juſt Rights, Liberties, and Properties, there are certainly ſuch Things that diſtinguiſh a Free People from Slaves; as any, who will but travel into *France*, *Turkey*, or any other Arbitrary Government, may eaſily ſatisfy themſelves. And if theſe Things ought to be really eſteemed as the Cauſes of all the Earthly Happineſs we enjoy, then certainly they may be defended, and fought for; and if in the Purchaſe of them many Men's Lives happen to be loſt, this is no neceſſary Conſequence; ſince ſuch Reformations are often brought about with very little Bloodſhed: As appears by many Inſtances I have now given of ſuch Reſiſtance, and may more evidently appear by this late great and wonderful Revolution. But admitting it ſhould happen as you ſay, and that a great Part of a Nation ſhould be deſtroy'd in a Civil War, for their juſt Rights and Liberties; yet it is ſtill upon your own Topick, better for Mankind that it ſhould be ſo, if true Liberty (I do not mean from lawful Authority) may be but obtain'd at laſt thereby; ſince Life is not to be eſteemed only for meer living, but living happily; *non eſt vivere, ſed valere Vita*; and Life is enjoyed by Slaves in Galleys, as much as by the greateſt Prince; yet no rational Man but will will allow that Men may venture their Lives, rather than ſuffer themſelves and their Poſterity to fall into that miſerable Condition; the like he may, if they were only to be reduced to the Condition of the Peaſants in *France*, or ordinary Chriſtians in *Turkey*; and if ſo, I think I may then ſafely affirm, that it is better that half the People of any Country ſhould be deſtroyed by a Civil War, if their juſt Rights and Liberties may be preſerved to them and their Children at the laſt, than that Slavery, with all its Conſequences, ſuch as Ignorance, Baſeneſs of Mind, Cowardice, Beggary, *&c.* ſhould ever be entailed upon a Nation: For as for the Loſs of Men, it may be made up again in ſome Generations; but when Men's Civil Liberties and Properties are once loſt, they cannot, without ſome rare and unexpected Revolution, be ever regained; as we ſee in the Subjects of all Sorts in *France*, *Turkey*, and *Muſcovy*, &c. at this Day. And therefore, if you pleaſe better to conſider, the real Liberties of a People (ſuch as we contend for) are not that of School-Boys, to be free from the Laſh of their Maſters: However, that if ſuch a Diſcipline were to be exerciſed upon Men all their Life-times, I think no Man but would ſay it were worth venturing his Life, rather than to fall into ſo miſerable a State. So that what you cite from the Poet *Lucan*, is only to be taken as a Poetical Exclamation againſt the Miſeries that Civil Wars often bring upon a Nation: But to ſay that it was *Lucan*'s Opinion, that Subjection under the ſevereſt Tyrant, was better than the Liberty the People of *Rome* enjoyed, is to ſuppoſe that either you or I have never read that Author; ſince nothing is more plain, than that the main Deſign of that Poem is to magnify *Cato* and *Pompey*, who fought for the Liberty of their Country, above *Cæſar*, and thoſe that joined with him to deſtroy it. As for all the reſt that you have ſaid, that you could make a Hiſtory of greater Miſeries, as Loſs of Liberty, *&c.* that have come upon whole Nations by fighting for their juſt Rights and Liberties againſt Tyrants, than by all the Tyranny and Violence of Mankind; I think you would have a hard Task to make it good, ſince I ſuppoſe under Abſolute Monarchies it is unlawful for the People to take up Arms, till they are either like to be enſlaved or deſtroyed by the Tyranny of their Prince, or elſe ſo intolerably oppreſs'd by his Soldiers, that they can ſcarce even in a State of War live in a much worſe Condition; and if they are ever ſubdued and reduced to their former Condition, they cannot be worſe than what they were under before. The like I may ſay as to Limited Monarchies or Commonwealths, that degenerate into Tyrannies; the People may perhaps better their Condition by Reſiſtance, and recover their Liberties, but cannot be in a worſe, if they are overcome: For I do not allow ſuch Reſiſtance lawful till the very Fundamental Conſtitutions of their Government, whereby it is diſtinguiſh'd from an Arbitrary Deſpotick Power, be actually invaded, or taken from them: So that let the worſt that can happen, they can ſcarce fall into worſe Condition than they were before. And as for *England*, we may ſpeak it experimentally, That of all the Reſiſtances that have been made by the Major Part of the Nation, or greater Part of it in Defence of

their

their juſt Rights and Liberties, every one of them have happened for the beſt, and been a Means of reſtoring this Kingdom to its former Eſtate, except the laſt, in which I grant we loſt it by that War; yet that was not from the Doctrine it ſelf, but becauſe the War was begun and carried on by a violent Faction, upon unjuſt Grounds; and, which was worſe, the Government and Diſcipline of the Church, as eſtabliſhed by Law, was altered without any Legal Power; all which could never have happened, had not that War been not only begun, but continued to the very laſt by a Standing Army, which could give what Laws they pleaſed, even to thoſe that pretended to command them. So that why the Abuſe of this Right once in a Thouſand Years, ſhould be made any juſt Argument againſt the ever uſing it at all, I can ſee no Reaſon in the World for it.

As to the reſt of your Diſcourſe againſt making any War about Religion, that is alſo as fallacious: For though I grant, that true Religion is not to be propagated, yet I think it may lawfully be defended by the Sword, eſpecially where it is the received Eſtabliſh'd Religion of a Nation; or elſe the Defence of Religion againſt Infidels, would be no Argument at all to fight againſt a *Turkiſh* or *Popiſh* Prince that unjuſtly invaded us. For tho' it is true, that Religion cannot be taken away from any Man without his Conſent, yet a Man may be taken from his Religion; and when the Profeſſors are deſtroyed, either by Martyrdom, or violent Perſecution, as bad, or worſe than Death, what will become of the Church and Religion Eſtabliſhed by Law, when all the Perſons that conſtitute that Church are driven away, deſtroyed, or made to renounce it? And for this we need go no farther than over the Water to our next Neighbour. It is likewiſe as fallacious what you urge of the great Corruption of Manners by Civil Wars; which if it be any Argument at all, is ſo againſt all Standing Armies whatever, whether raiſed by lawful or unlawful Powers. And I think there was much more Debauchery in the King's late Camp at *Hounſlow-Heath*, as alſo in all Places where they quartered, than was lately at *York* or *Nottingham*, among thoſe that took up Arms in Defence of their Religion or Civil Liberties unjuſtly invaded by the King and his Miniſters. Nor does it always happen, that Armies raiſed for Defence of Religion and Civil Liberty, muſt prove debauch'd; ſince we may remember, that the Parliament Army (to its Praiſe be it ſpoken) was infinitely more Sober, and outwardly Religious, than the King's. But if you will ſay that this proceeded from their Principles, as well as good Diſcipline, I know no Reaſon why Men who fight in Defence of their Religion and Civil Liberties, may not upon Church-of-*England* Principles, as to Church-Government, and Common-Prayer, may alſo by a ſtrict Diſcipline be as little debauch'd as any Standing Armies the moſt lawful Monarch can maintain; who if they lie Idle, as ours have done all this King's Reign till now of late, are more likely to fall into all the Wickedneſs that attend a looſe Diſcipline, and want of Employment, and conſequently may alſo corrupt the Places where they Quarter by their ill Example.

M. I ſhall not longer argue this Point, ſince I ſee it is to no Purpoſe. But you have not yet told me what theſe fundamental Rights and Liberties are, that you ſuppoſe the People may take up Arms to defend; nor yet what Number of the Nation may thus judge for themſelves, and take up Arms when they pleaſe; for it may ſo happen, that the whole Nation may be divided as to their Opinions concerning theſe Things. And the *South* Part of *England*, (for Example) may think their Religion and Liberties in great Danger, and that it is very neceſſary to take up Arms for it, when the *North* Parts are not under thoſe Apprehenſions, but lye ſtill; as was lately ſeen in the Riſings for the Prince of *Orange*.

F. As to the firſt of theſe Queries, I think I can eaſily give you Satisfaction, and ſuch as you can have nothing material to reply to. And as for the other, though I do not ſay I can give you ſuch an Anſwer as will bear no Exception or Reply, yet I doubt not but it will be that which may very well be defended, and may ſerve to ſatisfy any indifferent and unprejudiced Perſon; and which, if not allowed, will draw much worſe Conſequences along with it. And therefore as for the juſt Rights and Liberties we contend for, they are only ſuch as are contained in *Magna Charta*, and the Petition of Right, and are no more than the Immemorial Rights and Liberties of this Kingdom; and that firſt, In reſpect of the Safety of Mens Lives, and the Liberties of their Perſons. Secondly, The Security of the Eſtates and Civil Properties. And Thirdly, The Enjoyment of their Religion, as it is eſtabliſhed by the common Conſent of the whole Nation. All which I will reduce to theſe plain Propoſitions.

1. That

Vid. Pryn's *1st Part of the Vindication of the Rights of* English *Freemen.*

1. That no Freemen of *England* ought to be Impriſoned or Arreſted contrary to Law, without ſpecifying the Cauſe of his Commitment in the Warrant, or *Mittimus*, whereby he is ſent to Priſon. And he ought not to be ſent out of the Body of the Country, or Juriſdiction where the Crime was ſuppoſed to be committed, unleſs he be removed by due Courſe of Law. Neither ought he by the Law of *England*, to be detained in Priſon without Tryal only for a Puniſhment; but ought to be Tried the next Aſſizes or Goal-delivery, or within ſome reaſonable Time to be allowed of by the Court. And this was Common-Law, many Ages before the Act of *Habeas Corpus* made in the 31ſt of King *Charles* the Second, which does but aſcertain that Law concerning bailing Men for all manner of Crimes, in caſe no Proſecution come in againſt them: Much leſs can the King, or any Court below the whole Parliament, baniſh any Man the Kingdom in any Caſe, unleſs by ſome known Law already made, whereby he is bound to abjure it upon a lawful Tryal by his Peers, and Conviction by his own Confeſſion.

2. Nor can the King, nor any Courts of Juſtice, condemn a Man to loſs of Life, or Members, without due Tryal by his Peers, and Legal Judgment given thereupon.

And for Proof of this, I need go no farther than *Magna Charta*, and the Petition of Right, which are both but declaratory of the Common Law of *England*. See thefore *Magna Charta*, *Cap.* 29. whereby it is Declared and Enacted, That no Freeman may be taken and Impriſoned, or be diſſeiſed of his Freehold, or Liberties, or his free Cuſtoms, or be Outlawed, or Exiled, or in any manner deſtroyed, but by the lawful Judgment of his Peers, or by the Law of the Land, which is alſo farther confirmed and explained by theſe Statutes, *viz.* the 37th, 38th, and 42d of *Edward* III. and 17th of *Richard* II. all which are ſummoned up, and more particularly declared againſt, contrary to the fundamental Laws of the Land, in the Petition of Right exhibited to King *Charles* I. in Parliament, in the Thirtieth of his Reign; wherein the late Impriſonment of the King's Subjects without any Cauſe ſhewed, and the Denial of *Habeas Corpus* are expreſly reſented; as alſo putting Soldiers and Mariners to Death by Martial Law in the Time of Peace. And the King's Anſwer to this Petition is remarkable, The King willeth that Right be done, according to the Statutes and Cuſtoms of the Realm, *&c.* Which not ſatisfying as too doubtful and general, the King at laſt gave this full and clear Anſwer in legal Form, *Soit Droit fait comme il eſt deſiré*.

Cap. 18. 9, 3. *Cap.* 6.

Vid. Ruſhworth's *Hiſt. Col. pt.* 1. p. 507, 598, 625.

The Second Point in relation to our Civil Properties is this, That no Tax, Taillage or Aid ſhall be laid or levy'd by the King, without the Conſents of the Archbiſhops, Biſhops, Earls, Barons, Knights, Burgeſſes, and whole Commonalty of the Realm in Parliament. This was firſt of all granted by the 56th Law of *William* the Firſt, which I have already cited; as alſo more particularly forbid by the Statute *de Tallagio non concedendo*, in the 34th of *Edward* the Firſt, which was but a Revival, or Explanation of the former Law of *William* the Firſt, and alſo by the 25th of *Edward* the Third; whereby it is Enacted, "That no Perſon "ſhould be compelled to make any Loans to the King againſt his Will, becauſe "they are againſt Reaſon, and the Franchiſe of the Land; and it is alſo pro-"vided, that none ſhould be charged by any Charge or Impoſition called a "Benevolence, nor by ſuch like Charge, which is alſo more fully ſet forth in the "ſaid Petition of Right, to have been lately executed by certain Commiſſioners; as alſo that divers other Charges have been laid and levied by Lords-Lieutenants, Deputy-Lieutenants, *&c.* contrary to the Laws and free Cuſtoms of the Realm.

The Third Point declared againſt in this Petition of Right, is againſt Quartering of Soldiers (though they pay for their Quarters) contrary to the Will of the Owners and Inhabitants, much more when they did take free Quarter in Time of Peace, as hath been too much practiſed of late. So that by the Common Law of *England*, not only Private-Houſes, but Inns and Ale-Houſes, are not compellable to Quarter Soldiers unleſs they will. So much was this Nation anciently a Stranger to Standing Armies, and Quartering of Soldiers in Time of Peace, that there was no Proviſion made for it, either at Common-Law, or by any Statute that I know of.

4thly, That no new Law can be made without an expreſs Act of Parliament, or the joint Conſent of the King, Lords and Commons: And therefore that Parliaments ought to be duly ſummon'd and held for the Good and Safety of the Kingdom, by Common as well as Statute Law, once every Year; and according to more modern Statutes, once in Three Years at leaſt, or whenever there is a juſt and neceſſary Occaſion for it. And for Proof of this, I need go no farther than the Old *Engliſh Saxon Law*, which ordains, That the great Council, or *Mycel* Synod, ſhould be held twice in the Year, as the Ancient *Mirror of Juſtices* recites, and the conſtant Cuſtom long after the Conqueſt, in which there never paſſed a Year without a General Council of the whole Kingdom. And when this came by degrees to be diſcontinued, then were thoſe Statutes of *Edward* the Third, and *Richard* the Second, made; whereby it was enacted, That a Parliament ſhould be held every Year, and oftner if there were Occaſion.

5thly, Since the Legiſlative Power of Parliaments is the very Soul and Eſſence of the Government, the Election of Knights, Citizens and Burgeſſes to ſit and ſerve in Parliament, ought to be free; and all the Members of Parliament, who have Places there either by Patents or Writs of Summons, as the Lords; or elſe by Election or Writs, as the Biſhops, ought to be preſent, and there to have Freedom of Speech and Votes, without any Guards to over-awe or terrify them; and none to be forced, threatned, bribed or tamper'd with to give their Votes contrary to their Conſciences, either by the King or any of his Miniſters. This is ordain'd by the Statute of *Weſtm.* 1. Chap. 5. whereby it is expreſsly provided, That all Elections ought to be free: Which Sir *Edward Coke*, in his Notes upon this Statute, extends to Elections of Knights of Shires, as well as other Elections ſince. I have ſufficiently proved, that the Commons elected Members to Parliament when this Statute was made; and that this was the Ancient Law of *England*, you may ſee in the Rolls of Parliament, 1. *Hen.* 4. wherein it is alledged by the Parliament, as one of the Articles againſt *Richard* the IId. in theſe Words: *Item licet de ſtatu & conſuetudine Regni ſui in Convocatione cujuſlibet Parliamenti Populus ſuus in ſingulis Comitatibus Regni debeat eſſe liber ad eligendum, & deputandum Milites pro hujuſmodi Comitatibus ad inter eſſendum Parliamentis, & ad exponendum eorum gravamina, & ad proſequendum pro remediis ſuperinde prout videntur expedire.* N. 36.

Tamen præfatus Rex ut in Parliamentis ſuis liberius conſequi valeat ſuæ temerariæ voluntatis effectum, direxit mandata ſua frequentius Vicecomitibus ejus ut certas Perſonas per ipſum Regem nominatas, ut Milites Comitatuum, venire faciant ad Parliamenta ſua; quos quidem Milites eidem Regi faventes inducere poterat, prout frequentius fecit, quandoq; pro minas varias, & terrores, & quandoq; per munera ad conſentiendum illis quæ Regno prædicto præjudicialia fuerant, & Populo quamplurimum oneroſa, &c. So that you here may ſee, that it was then judged by the whole Parliament to be a Breach of one of the Fundamental Liberties of the Nation, for the King to make falſe Returns to be made of Parliament-Men, as alſo to corrupt or over-awe their Votes, either by Promiſes or Threatnings.

But to conclude: That we have ſuch Things as Fundamental Laws and Privileges, I ſhall go no farther than King *James* the Iſt his Speech, confirmed by an Act of Parliament of the Firſt Year of his Reign; wherein it is recited, " That " the King hath vouchſafed to expreſs many ways, how far it is, and ever ſhall be " from his Royal and Sincere Care and Affection to the Subjects of *England*, to " alter or innovate the Fundamental Laws, Privileges and good Cuſtoms of this " Kingdom, whereby not only his Royal Authority, but the People's Security of " Lands, Livings, and Privileges (both in general and particular) are preſerved " and maintained; *and by the aboliſhing or Alteration of which, it is impoſſible but* " *that preſent Confuſion will fall upon the whole State and Frame of this Realm.* So that if this Judgment of the King and both Houſes of Parliament was true, ſure we may juſtly ſuppoſe, that Things of ſuch vaſt Concernment deſerve our contending for by all Means poſſible and lawful to preſerve them: For what the Nobles of the Land upon Occaſion once ſaid with one Voice in full Parliament, every Free-born Subject of *England* may as well ſay at this Day, *Nolumus Leges Angliæ mutari*;

tari, which is a Maxim that ought to be imprinted upon the Hearts of all true *Engliſhmen*, who, (as my Lord *Bacon* very well obſerves) take themſelves to have as good Title to their Laws, as to the common Air they breathe in: And King *Charles* the Iſt ſomewhere ſays, "That it was his Maxim, that the King's Prero-"gative is to defend the People's Liberties; and that the People's Liberty "ſtrengthens the King's Prerogative. For indeed, if the Foundations are deſtroy-ed, the Superſtructure cannot ſtand; and if this Rule had been well obſerved by this King's Sons, we had not been reduced to this great Confuſion we now lie un-der. For my Lord *Bacon* calls thoſe Flatterers, who put the King upon ſuch dan-gerous Courſes, as great Traytors to him in the Court of Heaven, as he that draws his Sword againſt him. And King *James* the Iſt. in his Speech in Parliament, 1609, calls all thoſe who perſuade Kings not to be confined within the Limits of their Laws, "Vipers and Peſts both againſt them and the Com-"monwealth.

Lord Bacon's *Letters*, *p.* 43.

Ibid. p. 41.

M. For my part, I ſhall not go about to defend ſuch ill Men, whoever they be; yet ſince ſuch Inſinuations are done privately, and in a Corner, it is very hard for Subjects to judge when ſuch evil Counſels are infuſed into the Ears of Princes; and much more unjuſt for them to make any Reſiſtance on pretence to remove them: And therefore, beſides the Abſurdity of making Subjects both Judges and Parties, you have not yet told me, what Number of Men muſt be at once op-preſſed in their Fundamental Rights (as you call them,) and who may make this Reſiſtance. For methinks it is very abſurd, to give one County (for Example, upon the Account of free Quarter,) a Power of riſing in Arms, and reſiſting the King's Officers and Soldiers, when perhaps all the reſt of the Nation, where no Soldiers are, feel no ſuch thing.

F. I am not ſo unreaſonable, as to maintain, That Subjects ought to take Arms merely becauſe the King gives too much Ear to Flatterers and wicked Miniſters, or is too much led by them: Let him be ſo, provided the People do not ſmart for it. But if once it comes to that paſs, that they grow intolerable, and ſet the King upon a General Invaſion of the People's Rights, in any of the great Points I have now laid down, let them look to themſelves. If they will not per-mit a Parliament to ſit, and redreſs thoſe Grievances, they muſt expect the Na-tion will riſe at laſt againſt them, as they did againſt *Gaveſton* and the *Spencers*, and make them undergo that Puniſhment they ſo well deſerve. But as for what you ſay, of making the People Judges when their Rights and Liberties are in-vaded, the Conſequence is as bad, if the King alone ſhall judge. As for Example, in the Caſe of Ship-Money, the Judges gave their Opinions, that the King might raiſe Money for Ships of War, in caſe of Neceſſity, without any Controul; but if he were ſole Judge of this Neceſſity, he might lay this Tax as often, and raiſe it to what Degree he pleaſed. Therefore, as I ſhall not deny that the King may judge it fit to do a great many Things againſt the ſtrict Letter of the Law, in Caſes of urgent Neceſſity; but it will be at his Peril if he judge amiſs. As for Example: Every Man's Houſe is his Caſtle, and he may lawfully defend it againſt all illegal Commiſſions; yet I think no Man will deny, but that in caſe of a Fire in *London*, the King may, by Common Law, command his Officers to break open ſome of the next Houſes, and blow them up with Gunpowder to ſtop the Fire: But admit he ſhould, out of Malice or Miſinformation, command ſome Houſes to be blown up that ſtood a Mile off, under Pretence of ſtopping the Fire, do you think the Owners were bound to ſtand ſtill, and let them do it?

But if the People muſt not judge when their Fundamental Rights and Liber-ties are invaded, becauſe they will be both Judges and Parties; then no Man whatever, by this Argument, ought to defend himſelf againſt the Violence of ano-ther: For who can be Judge, but he that feels the Blow? Nor indeed could Princes make ſo much as Defenſive Wars, ſince whenever they do ſo, they are themſelves both Judges and Parties, as I told you at our Third Meeting, when I anſwered (as I then thought) all your Arguments againſt the People's ever judging for them-ſelves. So that if it be proved, that the People, in a Limited Kingdom, remain, as to the Defence of their Lives, Liberties, Religion and Properties, always in the State of Nature, in reſpect of their Prince, as well as all the reſt of Mankind, they

they muſt certainly make uſe of defenſive Arms when Neceſſity requires it, or elſe become Slaves whenever he pleaſes to make them ſo, if the People have no Right to judge of his Violence and Oppreſſions?

But as for the Number that are to make this Judgment and Reſiſtance thereupon; I grant in moſt Caſes this is not to be done, as long as the Oppreſſion is begun by Colour of Law, without actual Violence. Secondly, when it concerns only ſome particular Bodies of Men; thus, if Free Quarter ſhould be taken in one or two Towns or Counties, I do not allow it a ſufficient Cauſe for all the Neighbouring Towns, much leſs the whole County, or the Neighbouring Shires, to take an Alarm, and riſe in Arms upon it; ſince, perhaps, the King may know nothing of it, and if he were once informed of it, would redreſs it: But can you affirm the Caſe would be the ſame, if this Grievance ſhould become general all over the Nation? And that the King ſhould be ſo far from redreſſing it, that he ſhould put out a Declaration, ſetting forth that it was his Prerogative ſo to do; would not the whole Nation then take it for granted, that the King's Deſign was to govern by a ſtanding Army, who ſhould live upon the People, and devour them to the very Bones? And might not they make Reſiſtance againſt theſe Robberies and Oppreſſions? The ſame I ſay for all other Breaches made in any other of our Fundamental Rights. I do not allow any Reſiſtance to be made, till it become a general Oppreſſion upon the whole or major Part of the Nation, and without all Hopes of being otherwiſe remedied. And this muſt be alſo ſo evident, that there can be no Doubt or Denial of the Matter of Fact; for ſo long as the Caſe is diſputable, or the Grievance is not of a general Concern, I grant the People ought never to ſtir: But of this they alone muſt judge; ſince our Conſtitution has left us no other Judges of theſe Breaches, but the diffuſive Body of the whole People in the Intervals of Parliament.

But for your laſt Queſtion, as to the Number that may thus riſe to make this Reſiſtance, I anſwer thus; That when once the Miſchief becomes general, and without all other Remedy, any Part of the People who think themſelves ſtrong enough to defend themſelves againſt ſuch Violence, may begin to riſe, if they can, till the reſt of the Kingdom can come into their Aſſiſtance; as I told you the Town of *Briell* did againſt the Tyranny of the Duke *D' Alva*, in the beginning of the *Belgick* Wars; and it was ſoon after ſeconded by the Revolt of divers other Cities and Towns in thoſe Provinces, till the *Spaniards* were quite driven out.

M. I do not deny but you ſpeak more moderately on this Subject than moſt of your Opinion, who think every private Man has Right to take up Arms and raiſe a Rebellion, whenever he judges his Perſon or Eſtate is invaded, or injured by the Government. And indeed this Remedy of Reſiſtance ſeems at firſt ſight pretty tolerable, if it were not that we very well know that this many-headed Beaſt, the Multitude, is very apt to be deluded by the cunning Speeches, and ſly Inſinuations of factious and ambitious Men, whoſe Intereſt it will always be to fiſh in troubled Waters, and raiſe Diſturbances to make themſelves the Heads of a Party. Thus in the Year —42. what Lies and Stories were there raiſed to incenſe the People againſt that good King, to make them take up Arms againſt him, as an Invader of their Liberties, and one that was about to make War upon them: And who that is not over-partial to his own Opinions, does not ſee, that the Nation has been blown up into a Flame by the lying Reports of a *French* League, and a ſuppoſititious Prince of *Wales*; neither of which, I durſt pawn my Life, have the leaſt Tittle of Truth in them. So that this Doctrine can ſcarce fail, almoſt every Time it is put in Practice, to bring all Government to Anarchy and Confuſion.

F. I have already in Part anſwered this Objection at our Third Meeting; but ſince you will urge it over again, I ſhall in the firſt Place admit the Matter of Fact to be as you ſay, that the People may, by ſome turbulent Demogogues, be ſometimes ſo far incenſed as to take up Arms when there is no juſt Occaſion; yet let me tell you, I doubt that neither of theſe Inſtances you have given, will make good your Aſſetion. For in the firſt Place, as to King *Charles* the Firſt, it is ſaid by all Writers on the Parliament's Side, that the King by leaving his

Parliament, and going to *York*, and there taking a Guard when no Enemy was near, and when the Parliament had as yet raiſed no Forces at all; as alſo by his going to *Hull* to remove the Magazine of Arms that lay there, in order to put them into the Hands of an Army to make War upon the Parliament who then demanded the Settlement of the Militia to be in Commiſſioners of their Nomination; that he thereby broke his Coronation Oath, whereby he was ſworn to govern according to Law, and not by Force. But as for what you ſay in reſpect of the preſent Juncture of Affairs, I never can deſire a more plain Proof of the People's Neceſſity of taking up defenſive Arms; ſince admitting that neither of the Reports concerning the *French* League, and the falſe Birth of this ſuppoſed Prince be true; yet, I think, the Nation has had ſufficient Provocations to riſe as one Man, and joyn with the Prince of *Orange* for the obtaining of a free Parliament to ſet all Things right, which the King's violent, illegal Adminiſtration has ſo much diſcompoſed. But admitting the utmoſt you can ſuppoſe, that ſometimes the People may judge amiſs, as well as the King, and through that Miſinformation may take up Arms againſt their Prince, when there is no real Occaſion; ſhall this Abuſe of a Right be a ſufficient Cauſe againſt their ever exerciſing of it at all. I am ſure this is no good Argument againſt the natural Right of Self-Defence between private Perſons in the State of Nature, that ſome Men do often abuſe it; nor can I ſee how, upon theſe Grounds, even Sovereign Princes may be allowed to make ſo much as defenſive Wars, (as I ſaid but now) ſince they may pretend that themſelves are wronged, and invaded, or at leaſt are like to be ſo, when no ſuch Thing was really done, or intended; and ſo by their Miſ-judgment or falſe Pretences, many Millions of Lives may be loſt: What then? Muſt no Prince ever make War at all, till all the World be ſatisfied of the Juſtice of his Quarrel? If ſo, I doubt the laſt War King *Charles* the Second made againſt the *Dutch*, and this late War the King of *France* has now made upon the Empire, ſhould never have been by your Principles ſo much as begun; much leſs carried on with ſo great an Effuſion of Blood, and the Deſtruction of ſo many Cities and Towns: And whether this, as well as Tyranny at home, is not more often put in Practice by Princes, than any Reſiſtance of this Nation, or all the Subjects of the World have made againſt ſuch Tyranny and Arbitrary Power, I leave it to your ſelf, or any indifferent Perſon to judge.

M. I doubt not but I may very well join Iſſue with you upon this Point; for I think that upon thoſe very Conditions and Grounds you have now laid down, the Clergymen, Lords, Gentlemen, and Commons of this Kingdom, who have either come over with the Prince of *Orange*, or have taken up Arms in Defence of his late Declaration, cannot juſtify themſelves by any of the Inſtances you have given for joining themſelves with him in Arms. For tho' I grant His Majeſty, by harkening too much to Popiſh Counſels, may have done many Things which in Strictneſs of Law cannot be juſtified; yet ſince they do not ſtrike at that which you call the Fundamental Conſtitution of the Government, and have been alſo done without any Force on the People of this Nation; but have been either tranſacted by Judgment of Law, or the Colour of it at leaſt, *viz.* by the Opinions of all or the Major Part of the Judges; all the Parties above-mentioned ought (according to your own Principles) to have waited for the Meeting of the next Parliament, to whoſe Determination they ought, by the Law of the Land, to have referred all ſuch Grievances and Violations of Laws which they had to complain of; and if then the King had refuſed to have remedied them, they might have had ſome Colour (I do not ſay Right,) for taking up Arms, and doing what they have done; whereas I cannot ſee how you can, even upon your Principles, defend the late Riſers from wilful Rebellion againſt the King.

And for Proof of this, I need go no farther than the Prince of *Orange*'s late Declaration, which being drawn by the beſt Advice of the Malecontents then in *Holland*, would not fail to mention all the Violations of Law, which they thought his Majeſty's Government had been guilty of, ever ſince his coming to the Crown: And therefore, not to inſiſt upon the Want of Right which I conceive the Prince had to concern himſelf with the Affairs of another Prince's Kingdom,

I ſhall,

I ſhall, however, mention every Article in which his Highneſs conceives the Religion, Laws, and Civil Liberties of this Nation to be endangered. In the Firſt place, As to the diſpenſing Power, which the King has lately aſſumed to himſelf in Matters of Religion; and thereby putting into Offices and Commands Perſons uncapable by Law of bearing them, without taking the Teſt; as I ſhall not now diſpute the Legality or Illegality of the King's Declaration concerning it, ſo as to that Part of it which concerns Liberty of Conſcience, or diſpenſing with the Papiſts and Diſſenters to meet in Aſſemblies for their Religious Worſhip, notwithſtanding all the Acts made againſt Maſs and Conventicles, it was no more than what King *Charles* II. had done before with the Advice of his Privy-Council; in which, if it had been Rebellion to have oppoſed him, ſure it is the ſame Crime in the Reign of his Brother.

2. As for the Commiſſion for Cauſes Eccleſiaſtical.

F. Since I foreſee your Diſcourſe upon this Subject is like to be long; and to conſiſt of many more Heads than I doubt my Memory will ſerve to bear away, pray give me Leave to anſwer all your Inſtances one after another, as you propoſe them. Firſt, then, As to the late Declaration concerning the Diſpenſing Power, it was ſo far from being done by Law, or ſo much as the Colour of it, that beſides its being againſt divers expreſs Acts of Parliament, which tie up the King's Hands from diſpenſing with the Acts againſt publick Maſs and Conventicles; as alſo, that diſable all Perſons whatever to act in any publick Employments, till they have taken the Teſt appointed by the ſaid Act, (in which all *non-obſtantes* are expreſly barred): But this Declaration was never ſo much as ſhewn to the Privy-Council, till it was ready to be publiſhed; and then, indeed, the King cauſed it to be read in Council, declaring that he would have it iſſued forth, tho' without ever putting it to the Vote, or ſo much as asking the Conſents of the Privy-Counſellors there preſent; tho' I grant the Title of it ſets forth, that it was done by his Majeſty in Council, to impoſe upon the Nation that ſtale Cheat, whereby this King (as well as the laſt) would have had us believe, that their Declarations had been iſſued by the Conſent of the Council, when, God knows, there was no ſuch thing.

And as for any Judgment, or Opinion of the Judges to ſupport it, and make it paſs by Colour of Law, it was never, as I can hear of, ſo much as propos'd to them in their judicial Capacities, though perhaps it might be propos'd to the Lord Chancellor, and ſome of the Judges who were of the Cabal, which is nothing to the purpoſe; all that I ever heard to have been brought judicially before them, was, the Caſe of Sir *Edward Hales* taking a Commiſſion for a Colonel of a Regiment, after he had openly declared himſelf a Papiſt; in which great Point, though I grant the Major Part of the Judges gave their Opinion for the Diſpenſing Power, yet was it only *in the Caſe of Military Commiſſions*, as ſeveral of them afterwards declared, and not of all ſorts of Employments, as well Civil as Military; much leſs for Popiſh Heads of Colleges, Parſons and Biſhops, to hold their Livings, Headſhips, and Biſhopricks, if they pleaſed to turn to the *Romiſh* Religion; or that the King ſhould pleaſe to beſtow them upon Popiſh Prieſts, it would have been as legal in the one Caſe, as in the other; ſince as for Popiſh Heads of Colleges, and Parſons, we have had too many Inſtances of it; and if we had none for Biſhops, we muſt thank the Conſtancy of moſt of them, if they have not openly declared for the *Romiſh* Religion, ſince they might have kept their Biſhopricks notwithſtanding. But I do not at all doubt but that ſuch a general Diſpenſation for profeſſed Papiſts to take and hold all ſorts of Offices and Places of Truſt, not only Military, but Eccleſiaſtical and Civil, would have in a little time brought all Offices and Employments into their Hands.

Nor is this Diſpenſing Power in Matters of Religion, the ſole thing aimed at by this Declaration, as appears by the very Words and whole Purport of it; which is not confined to Matters of Religion only, but claims an unlimited Power of diſpenſing with all ſorts of Statutes in all Caſes whatever, none excepted; and if ſo, pray tell me what *Magna Charta*, or the Statute *de Tallagio non concedendo*, or any other Law will ſignify, whenever the King pleaſes to diſpenſe with them, either as to raiſing Money, or taking away Mens Lives, or Liberties, or Eſtates,

contrary

contrary to Law? Nay, the Papiſts already give out (and that in Print) that all Laws for taking away Religious Orders, and Suppreſſures of Monaſteries, are againſt *Magna Charta*, by which *Holy Church* (that is, the Popiſh Religion then in being) is to enjoy all her ancient Rights and Liberties; and the Abbots and Priors do thereby, as well as the Biſhops and Lay-Lords, reſerve to themſelves all their ancient Rights and free Cuſtoms. Now whether this unbounded Prerogative would not quickly have deſtroyed not only the Eccleſiaſtical, but Civil Conſtitution of this Kingdom, as they now ſtand eſtabliſh'd by Law, and would have ſoon introduc'd both Popery and Arbitrary Government on this Nation, I leave it to your ſelf, or any indifferent Perſon to conſider.

And though I do not ſay, that the bare giving of Papiſts or Proteſtant Diſſenters a Liberty of Religious Meetings, or Aſſemblies for Maſs, or Preaching, is an Infringment of the free Exerciſe of our Religion eſtabliſh'd by Law; yet pray take one thing along with you, which is a Matter of great Moment to the Diſſenters, as well as to us of the Church of *England*: For if the King can thus, by his Prerogative, give them a Liberty to meet publickly, contrary to Law; let the latter look to it; for he may by the ſame Prerogative (whenever he pleaſes) diſpenſe only with the Papiſts, and keep the Laws ſtill on foot againſt Diſſenters; nay, he may by the ſame unbounded Prerogative diſpenſe with all the Laws for the publick Exerciſe of our Religion; and under pretence of diſpenſing with them only in ſome particular Caſes, ſhut up our Church-Doors one after another, beginning with the Cathedrals, and ſo proceeding by degrees to Pariſh-Churches. And tho' I grant King *Charles* II. did aſſume a Power of diſpenſing with all Statutes concerning Religious Meetings, contrary to Law; yet the Nation had not then any ſufficient Reaſon to riſe in Arms againſt this Declaration; ſince it did not extend the King's Prerogative beyond thoſe Acts concerning Religious Worſhip. And farther, the Nation was not out of all Hopes of having it redreſſed by the next Parliament, and ſo was not in that deſperate Condition in which it was lately, before the Prince of *Orange*'s coming over. And you may remember, that the late King, upon the joint Addreſs of the Lords and Commons againſt that Declaration, was forced to call it in, and cancel it; which certainly ought to have been better conſidered by his Majeſty, and thoſe of the Popiſh Junto that adviſed him to iſſue out the late Declaration, ſo expreſly contrary to Law, and the Senſe of both Houſes of Parliament, and which gave the Archbiſhop of *Canterbury*, and the reſt of his Brethren, a ſufficient Ground of petitioning againſt it; and this was ſo evident, that a Jury, in which the greateſt Part were high Prerogative-Men, could not upon a fair Trial but acquit them.

M. I ſhall not further diſpute this Point, ſince you have dwelt ſo long upon it; though I muſt ſtill tell you, I do not look upon this as a ſufficient Cauſe for the Nation's taking up Arms, for another Reaſon I ſhall ſhew you by and by. And therefore I ſhall now proceed to the next Head complain'd of in the Prince's late Declaration, (*viz.*) the late Commiſſion for erecting a new Court for Cauſes Eccleſiaſtical; but as I will not enter upon the Queſtion of the Legality of it, ſo on the other ſide it was alſo done by Colour of Law; and the King, as ſupreme Head of the Church, was told by his Miniſters, that he had Power to erect what new Court Eccleſiaſtical he pleaſed, provided it was not of the ſame kind with the High Commiſſion-Court, which had been abrogated by the Stat. of the 17th of King *Charles* I. as likewiſe particularly excepted in the Proviſo, in the Stat. of the 12th of King *Charles* II. for reſtoring Eccleſiaſtical Juriſdiction to the Biſhops Courts: So that admitting that Court was not legal, yet the Perſons who adviſed the King to erect it, and the Commiſſioners who ſat in it, were only anſwerable for it in the next Parliament; and though the Biſhop of *London* was ſuſpended, and the Preſident, and Fellows of *Magdalen* College were unjuſtly expelled by this Court, yet ſure none of theſe Miſcarriages could give the Subjects of this Kingdom any juſt Pretences to take up Arms to redreſs them, being done (as I ſaid before) by Colour of Law, without any Force or Violence; and was alſo ſubmitted to by the Parties againſt which theſe Decrees were given, and was at the moſt but a Matter of particular Concern, and reach'd no farther than the ſaid Biſhop and College, and did not touch the Religion and Civil Liberties

Liberties of the whole Kingdom; and conſequently was not of that general Importance, as to be any juſt Cauſe of the whole Kingdom's taking Arms, much leſs for the King's Officers and Soldiers to run over to the Prince of *Orange*, as they lately have done.

F. To anſwer what you have now ſaid concerning the Eccleſiaſtical Commiſſion; that, I muſt alſo tell you, was iſſued forth without ſo much as any Colour of Law for it; and though the late Chancellor, and ſome of the worſt and moſt Mercenary Judges countenanced it by appearing for, and acting in it, yet it is very well known, that it was never propoſed to all the Judges to be argued in the Exchequer Chamber, as it ought to have been, before a Thing of that great Importance to the whole Nation had paſs'd the Seals. As to what you ſay, that the King's Miniſters told him it was according to Law, and that they alone ought to anſwer for it in the next Parliament, and that no publick Diſturbance ought to have been made about it, becauſe the Things that that pretended Court did, were but of a particular Concern, and only reach'd the Biſhop of *London*, and one ſingle College; that is but a Fallacy which you put upon your ſelf. For ſure if you had better conſidered of it, you would find that what theſe Commiſſioners have already done, is of a little more publick Concernment than you are aware of; for pray tell me, why by the ſame Law, by which the Biſhop of *London* was ſuſpended for his Refuſal to ſilence Dr. *Sharp*, all the Biſhops in *England* might not have been ſuſpended one after another by that pretended Court, if they had refuſed to obey or execute any Letters or Orders from the King, tho' never ſo illegal or unreaſonable? Since what Command could be more illegal, than the King's poſitive Order to the Biſhop to ſuſpend a Clergyman from his Dioceſe, without firſt hearing him, or giving him leave to anſwer for himſelf? So likewiſe for the Caſe of *Magdalen* College; by the ſame Law by which theſe Eccleſiaſtical Commiſſioners took upon them to turn out the Preſident and Fellows, for diſobeying the King's *Mandamus*, by the ſame Law the King might put upon any other College in either Univerſity, Popiſh Heads, and Popiſh Fellows, till inſtead of Nurſeries for the Education of our Youth in the Proteſtant Religion, they may become as abſolute Popiſh Seminaries, as the Colleges of *Doway*, or St. *Omers*. And though I grant that the Perſons concerned in theſe unjuſt Decrees, might have patiently ſubmitted to them without any Proteſtations againſt the Juriſdiction of that pretended Court, ſince they might for ſome prudential Reaſons have thought fit to ſubmit, without making any ſuch Proteſtation, and yet for all that not allow their Authority; yet indeed the Matter of Fact was far otherwiſe; for when a Part of theſe Commiſſioners ſate at *Magdalen* College, to expel the ſaid Preſident and Fellows from their Places, contrary to Law, and the expreſs Statutes of the College, ſeveral of them proteſted againſt their whole Proceedings, and appealed to the King's Courts at *Weſtminſter*. And it is a plain Proof how willingly Dr. *Hough* the Preſident of this College, ſubmitted to this Sentence, by his locking the Doors of his Lodgings, and leaving the Commiſſioners to break them open before they could get in, and put in his pretended Succeſſor by Force.

But as to what you ſay, that the King was told, he might as Supreme Head of the Church, ſet up what new Court he pleaſed for the Execution of his Eccleſiaſtical Juriſdiction; it is certainly a great Miſtake. For I utterly deny, that the King has Power to erect any new Courts either Eccleſiaſtical or Civil, unleſs by Authority of Parliament; the King's Power to make a Vicar-General being only confirmed by the Statute of King *Henry* the Eighth, as was alſo the Authority of the High Commiſſion, by the Statute of the firſt of Queen *Elizabeth*. And if either of thoſe high-ſpirited Princes had believed themſelves to have been inveſted with ſuch an unbounded Prerogative, they would certainly have exerciſed it without being beholden to the Parliament. But indeed it is but a Subterfuge, to alledge that this Court was not of the ſame Nature with that of the High Commiſſion, becauſe it did not take upon it to Fine, or commit Men to Priſon, nor to adminiſter the Oath *ex Officio*, to thoſe that were convened before them; ſince it is not the different Name, or ſome ſmall difference in the Manner of the judicial Proceedings, but the Cauſes or Matters that a Court pretends to take Cognizance of, that can make it a Court of a quite different

Nature. Now it is notoriously known, that this late Ecclesiastical Court took upon it to judge of Matrimonial Causes about Alimony, and concerning Simoniacal Contracts, and all other Misdemeanors both of Clergy and Laity, against Religion and good Manners, which were the same Things the late High Commission Court took upon them to determine.

M. I shall make no farther Reply at present to what you now say, till I come to answer once for all: Therefore I shall go on to the next Thing excepted against in the Prince's Declaration, (*viz.*) the Erecting of Publick Chapels for Mass, the protecting of Priests, and the making a Jesuit a Privy-Councellor; all which, tho' I confess they are against the express Letter of divers Statutes, yet since all these Things depend upon the King's dispensing Power, set forth in his Majesties late Declaration, which as I will not assert, so I will not positively deny; since the said Declaration of Indulgence, and all Proceedings thereupon were issued out and executed under Colour of Law, *viz.* of the King's Ecclesiastical Jurisdiction, without any Force or Violence upon the Conscience, Religion, or Properties of the King's Protestant Subjects, whom the King in his said Declaration solemnly promises to protect in the free Possession, and Enjoyment of their Religion established by Law. And I cannot see how a Liberty granted to Popish Priests to say Mass, or the putting in a Jesuit into the Privy Council, or making Popish Judges, or putting a Papist into the Ecclesiastical Commission, can be looked upon as any Invasion of the Protestant Religion; the free and publick Profession of which we have (God be thanked) as quietly enjoyed as we did in the Reign of this King, or in that of his Brother.

F. Since you cannot directly justify the King's setting up Publick Mass-Houses in *London*, and in most other Parts of the Kingdom, and his so publick protecting and countenancing Papists and Jesuits, even to the making a Jesuit a Privy-Counsellor, tho' they are all in Judgment of Law alike publick Enemies and Traytors to the King and Kingdom; and that all these (as you cannot deny) are contrary to the express Words and Intent of all Statutes against Priests and Popish Assemblies; so you endeavour to palliate it under the King's dispensing Power, which you suppose to have had a Colour of Law (at least) to support it. But tho' the giving Liberty to Popish Assemblies, and the Conventicles of the Dissenters, was no direct hindrance of the free Exercise of the Protestant Religion established by Law, yet I must utterly deny that the King has any such Prerogative, as to dispense with those Laws, and by his sole Authority to declare those that the Law calls Enemies and Traytors, to be good Subjects. And you may as well tell me, that the King has not only a Prerogative Power to pardon Highway-men; but may also protect them, and put them into his Guards, with a Commission to rob whom they pleased; as to give Papists power to bear Arms, or to protect and employ declared Traytors, (as Popish Priests and Jesuits are by Law) as the King had done. The like I may say, for putting in Popish Judges and Justices of Peace, (*viz.*) that it was all done by Force of the King's Personal Orders, without his Legal Authority, which is that alone we can take cognizance of, or render any Obedience to. And though 'tis true, I do not deny the King a Power of making whom he pleases Judges, yet this Prerogative is still to be exercised according to Law. And therefore if the King should make an illiterate Man a Judge, who could neither Write nor Read, the Writ or Patent would be void in it self. The same I may say of a Popish Judge; the Law making no Difference (as I know of) between a natural and a legal Disability. But however the turning out honest and able Judges, because they would not give up our Religion and Liberties to the King's Arbitrary Will, is certainly a much greater Breach of the Trust committed to him by his Coronation Oath, wherein he swore he wou'd maintain the Laws of the Land, and mix Equity with Mercy in all his Judgments: Now where is the Equity, or Justice of this, that whereas most of the Judges anciently held their Places *quam diu se bene gesserint*, they should now (by a notorious Encroachment of the Prerogative) not only be made *durante bene placito*; but that the King should stretch this Prerogative so unreasonably, as to examine the Judges beforehand, whether they would agree to the dispensing Power; and to turn out those that refused to comply, meerly because they would not serve his Arbitrary Designs? And then to put in some of the meanest and most mercenary Lawyers

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at the Bar, (nay ſome who never come thither at all) into their Places for no other Merit or good Qualities, but becauſe they would ſerve a Turn, is ſo notorious a Breach of his Oath, that it could not fail in a little Time to deſtroy all our Common, as well as our Statute-Laws, ſince theſe were all lately lodged in their Breaſts, and reſolved into their Arbitrary Determinations, which yet (as all the World knows) were wholly managed by the Influence and Commands of the Court: And this I ſay again, was as notorious an Abuſe of the King's Prerogative, as if he had put in Highway-Men into his Guards, with Commiſſions in their Pockets, to rob whom they pleaſed; ſince theſe Gentlemen in Scarlet have taken the ſame Liberty under Colour of Law, to raiſe Taxes upon the Subjects, againſt the Expreſs Letter of an Act of Parliament; as may be ſeen in their late Determination concerning Chimney-Money, making Cottages, built for the Uſe of the Poor, and Houſes of Perſons exempted from Payment, liable to Chimney-Money, contrary to the expreſs Words of that Statute.

M. I cannot deny but the Things you now mention have been great Abuſes of Prerogative, but whether ſo great as to require Reſiſtance I muſt ſtill diſagree with you. Therefore I ſhall now proceed to the next Particular complain'd of, (*viz.*) The examining of the Lords Lieutenants, Deputy-Lieutenants, Sheriffs, and Juſtices of Peace, to know whether they would concur with the King in the Repeal of the Teſt and Penal Laws, and turning all ſuch out of Commiſſion as refuſed to comply with the King's Deſires in this Matter. Now, tho' I will not ſay it was well or prudently done, yet it was no more than (what I think) the King, by his Prerogative, might juſtify the doing of; ſince he may, by Law, give a *quietus eſt* to what Judges he pleaſes; and put in or out of any Commiſſions, whether Civil or Military, whom he thinks fit: And as for the Perſons ſo examined, they might have choſen whether they would have given any poſitive Anſwers to the Queſtions put to them, by the Lord Chancellor and Lord Lieutenants; and if they had refuſed to anſwer poſitively to thoſe Queſtions propoſed to them, I know no other Penalty they had been liable to, more than being put out of Commiſſion, which ſure is no Puniſhment, but rather an Eaſe. And though I do not defend thoſe evil Miniſters, that put the King upon this Method of diſtruſting and diſobliging his beſt Proteſtant Subjects, (I mean thoſe of the Church of *England*) by putting them out, and putting in either Papiſts or Fanaticks in their Steads; yet all that own themſelves of that Communion, ought to have been of more loyal Principles, than to have taken up Arms, as ſome of them have done, upon Pretence of ſtanding by the Prince of *Orange*'s Declaration againſt theſe Abuſes.

F. I ſee though you cannot directly juſtify the examining of the Lords Lieutenants, and Deputy-Lieutenants, and Juſtices of the Peace, about taking away the Penal Laws and Teſt, and turning thoſe out of Commiſſion that refus'd; yet you ſtrive to mitigate it (as far as you can) by making it Part of the King's Prerogative, to put in and out what Judges, Juſtices, and other Officers he pleaſes. Well, granting this to be ſo, yet ſure you cannot deny but that the cloſetting of Judges, and all other Officers you have now mention'd, and putting thoſe out of Commiſſion, that refus'd to comply with the King's Will, (and that for no other Reaſon) was ſure a ſtrange Abuſe of that Prerogative: And the Excuſe you make, that the Perſons examin'd had a Liberty to refuſe whether they would give any poſitive Anſwer or not, is yet more trivial, ſince it is very well known, that as well thoſe who gave doubtful Anſwers, or refuſed to make any Anſwer at all, were as much turned out, as they who poſitively denied to comply with the King's Demands: So that no Anſwer was looked upon as Satisfactory, but ſuch as ſeemed to give up all Freedom of Elections, and Votes in Parliament; none being to be choſen by the King's Directions, but ſuch as would engage before-hand to repeal the Teſt and Penal Laws. And I think you will not deny, but that the King by thus examining all theſe Magiſtrates and Officers you now mention, and by turning thoſe out that refuſed to comply, did all he could to hinder the Free Election of Members to ſerve in Parliament, and the Freedom of giving their Votes when they came thither: And the King might as well another Time have declar'd, That he would have no Members choſen, but ſuch as would agree to take away the Statute *de Tallagio non concedendo*, or any Branch of *Magna Charta*,

which he ſhould think fit to have repeal'd. And as this ſtrikes at the very Fundamental Conſtitution of the Government, (*viz.*) the Free Election of Parliament-Men, ſo it was inſerted among the Articles againſt *Richard* the Second, that he had caus'd the Sheriffs to return whom he pleas'd for Knights of Shires, as I have already ſhewed you.

But what ſay you to the King's late calling in almoſt all the Charters of Cities, Towns, and Corporations in *England*; and putting in Popiſh or Fanatick Officers and Magiſtrates into the Rooms of thoſe that were turn'd out, only to influence Elections, and to procure what Perſons he deſired to be return'd for Parliament-Men? Is not this a grand Breach of the Fundamental Conſtitution of the Kingdom, thus to take away the Legal Rights and Privileges of theſe Corporations, for no other Cauſe than to procure the King ſuch Parliament-Men as he had a mind to? And if a Parliament had been choſen by Men of theſe Principles, pray conſider what ſmall Hopes there would have been, for Men of like Principles with them that choſe them, to have redreſſed the Grievances the Nation then lay under.

M. I beg your Pardon, I forgot to mention this ſooner; and though I will not take upon me abſolutely to defend the Legality of it, much leſs the Deſign for which it was done, ſince I grant that it was in order to deſtroy, or at leaſt to humble, the Church of *England*; yet ſince it was done by Colour of Law, and Judgment of the Court of *King's-Bench*, and no more than what has been formerly done in the Reign of King *Charles*; I cannot ſee how the Noblemen and Gentlemen lately in Arms, could defend their Riſing upon that Ground, unleſs they would alſo at the ſame Time, juſtify the Lawfulneſs of the Plot and Rebellion intended in the ſame Reign; and in which ſo many of the Whig Nobility and Gentry were deeply engaged.

F. To anſwer what you have ſaid in Vindication of this great Violation of one of the Fundamental Rights and Liberties of the Kingdom, I muſt in the firſt Place tell you, That as I ſhall not now examine into the Matter of Law, whether a Corporation can forfeit its Charter for Miſdemeanors or not; much leſs ſhall I concern my ſelf whether it were done by or without Colour of Law, or the Judgment of the Court of *King's-Bench*, ſince it is notoriouſly known that none of the Judges were permitted to ſit there, nor any new ones put in, but ſuch as would blindly agree to all the Court would have done; and therefore I value not any Thing they did, nor think it one Jot the more legal for their Judgments: Nor is it any Excuſe, that the ſame Thing was done in King *Charles*'s Reign, and therefore might as well be done now without any Riſing againſt it. For though I muſt tell you, I look upon the taking away of the Charters from the City of *London*, and the other Cities and Corporations of the Kingdom, one of the moſt arbitrary and illegal Acts of that King's Reign, yet there were ſeveral Reaſons which made it unlawful for the Nation to riſe then; yet it might not be ſo now: As in the firſt Place, becauſe moſt of thoſe Charters were either willingly ſurrender'd by the Members of thoſe Corporations, or elſe were declared forfeited by Trial and Judgment of Law. Whereas it was much otherwiſe in this King's Time, when notwithſtanding that all the Cities and Towns Corporate in *England*, had but a few Years before taken out new Charters to their great Trouble and Expence, they were now ſummon'd anew to ſurrender theſe again, for no other Reaſon, but becauſe it was the King's Pleaſure it ſhould be ſo. For who can imagine, that all the Corporations of *England* could have forfeited their Charters in ſo ſhort a Time as Three or Four Years? And they were plainly told, that the King muſt and would have them; and that it was to no Purpoſe to ſtand out; and therefore it was no wonder, if all the Cities and Corporations of *England* were forced to ſubmit patiently to this Violation, ſince they found by Experience the Judges were ready to give Judgment againſt them right or wrong.

And beſides this, I have already laid it down as a Maxim, That no Reſiſtance whatever is to be made, till Matters become deſperate, and all other Means are become abſolutely ineffectual, which I think they were not, as long as King *Charles* lived, who beſides the Inconſtancy of his Humour, which ſeldom perſiſted long, either in well or evil-doing, (eſpecially if the ill Conſequences of it were well laid open to him,) was too timerous then to have put in any Magiſtrates into Corporations, but ſuch as were for the Proteſtant Religion, as it ſtands by Law Eſta-

eſtabliſh'd; and ſuch, however angry they might be with thoſe they call'd Whigs, in reſpect of their oppoſing the Duke's Succeſſion to the Crown; yet I believe moſt of them would never have given up the Freedom of Elections of Parliament-Men, or have done any Thing to bring in Popery among us: So that as long as Things remained in this State, there were ſome hopes ſtill left of a Redreſs of our Grievances, whenever a Parliament had met; and that the Nation was grown more cool, and had come to it ſelf again after thoſe Heats which had riſen in the late Parliaments about the Succeſſion, and other Things. Whereas now the Caſe was far otherwiſe in this King's Reign; wherein we found not only our Religion, but the fundamental Rights and Privileges of the Nation, ſtruck at by the King's diſpenſing Power, and the Arbitrary Proceedings of the Judges. And not only the Freedom of Elections of Knights of Shires, but of Citizens and Burgeſſes, endeavoured to be taken from us; either by threatning the Electors, or elſe by open Force; as I ſhall prove by and by, when I ſhall have Occaſion to ſpeak farther upon that Head: So that unleſs a great Part of the Nation had declared for the Prince of *Orange*, he had been repuls'd with Shame and Ruin, and our Chains tied faſter upon us, than ever they were before.

M. I ſhall forbear replying farther to what you have now ſaid, till I come to conclude. But in the mean Time I cannot omit another material Grievance ſet down in the Prince's Declaration, (*viz.*) the turning out and diſarming the *Engliſh* Proteſtant Magiſtrates, Officers, and Soldiers in *Ireland*, and putting of *Iriſh* Papiſts in their Rooms; as alſo the late Declaration of Indulgence in *Scotland*; but as I will not defend the Juſtice or Prudence of thoſe Councils, ſo I think none of them could give any ſufficient Cauſe for the People of this Kingdom to riſe in Arms; for ſure it is enough (if not too much) for them to concern themſelves with the Grievances and Miſcarriages of their own Country, without taking upon them to take up Arms to reform thoſe of their Neighbours; ſince they are not only ignorant of the Laws and Conſtitutions of thoſe Kingdoms, but may alſo miſtake the true Reaſons and Grounds on which thoſe Alterations were made.

F. I ſee you can as little defend what has been illegally acted in *Scotland*, as in *Ireland*; only you would fain put me off, by telling me that the People of this Nation have nothing to do to take Notice of what is done in other Kingdoms; and you may as well tell me, that a Man ought not to take any Warning, as to defend himſelf againſt Thieves, though he ſees another Man robb'd by them before his Eyes; or that the Proteſtants of *England* ſhould not take Warning by the ſad Example of thoſe in *France*, from ever ſuffering a Popiſh King from having the ſame Power here as the *French* King has in *France*, for fear of the like fatal Effects; *Since I never found Papiſts give Proteſtants the leaſt Forbearance, or ſhew them any Mercy, longer than whilſt it was not in their Power to hurt them.*

But to come to the Matter in Hand; we cannot but concern our ſelves with what has been ſo lately done in *Scotland* and *Ireland*, for the introducing of Popery and Arbitrary Government in thoſe Kingdoms, ſince the latter is notoriouſly known to be govern'd by the ſame Laws as *England*; and it is as much againſt the Laws of that Kingdom, as it is of ours, for the *Iriſh* Papiſts to be put in Arms, and the Proteſtant Militia diſarmed, and for Popiſh Judges, and Juſtices of Peace to be put in Commiſſion, as hath been practiſed under the Government of the Lord *Tyrconnel:* And if *Engliſh* Proteſtants in *Ireland* cannot enjoy their Eſtates and Liberties, without being turned out of them by the Papiſts, how could we in *England* expect better Treatment, whenever they ſhall think themſelves ſtrong enough: And as for *Scotland*, though it be not wholly governed by the ſame Laws as *England*, yet the fundamental Conſtitution of the Government is the ſame in both Kingdoms, and the King can no more make, abrogate, or diſpenſe with Laws in *Scotland* without the Parliament, than he can here; and therefore for the King not only to iſſue out ſuch a Declaration of Indulgence, and Suſpenſion of all the Penal Laws in *Scotland* againſt Papiſts, but alſo therein to declare, that he expected *an Obedience to all his Commands, without Reſerve* (whether legal or not) was ſo bold a Stroke, that we could not but

expect the like in *England*, though His Majesty thought it not fit at present, to discover his Mind so plainly to us.

M. I shall not any longer dispute these Points with you, but own that the Abuses you mention, were indeed of great Concern both to the Protestant Religion, and our Civil Liberties; yet however, besides the Laws of the Land, (which I still suppose do expresly forbid all Resistance of the King upon any Account whatsoever) I think there ought to have been no such Thing done by any Subject of this Nation, even upon your own Principles, which seem not to allow of such Resistance, but in case of an actual and violent Assault upon Mens Religion, Lives, and Properties, and that by open Force of Arms. Now I desire you to shew me, whom the King has ever yet dragoon'd, or persecuted till they would become of his Religion? Or whose Life his Majesty hath taken away, even of the most notorious Traytors, but by due Tryal, and Course of Law? Nay, he has pardon'd divers, several after they were condemn'd, meerly because he was inform'd they were not really guilty of the Crimes whereof they stood condemn'd. And as for Mens Civil Properties, I defy you to shew me any Person's Estate that has been taken from him without due Course of Law; or any Taxes that have been Assessed upon the Nation, but what have been granted by Parliament; or else raised by the Opinion of the Judges, by whom if his Majesty hath been misinform'd, They only ought to answer for it in the next Parliament, who are the only proper Judges of their Miscarriages, without having any Recourse to Force, which the Laws of this Kingdom so much abhors. And therefore make the worst of it you can, all these Grievances already mentioned, were no more than some Breaches upon the outward Splendor of our Church, Religion, or some of our Civil Liberties; whilst the Main and Essential Parts of both continu'd untouch'd; since, God be thanked, we have hitherto enjoy'd the Free and Publick Profession of our Religion, together with our Lives, Liberties and Estates, in perfect Peace, and undisturb'd by any outward Force or Violence from the King, or any Commission'd by him: And as for those Grievances you mention, *viz.* The turning out the President and Fellows of *Magdalen* College, by the late Ecclesiastical Commission, as also the turning out of the Deputy Lieutenants, and Justices of the Peace, and all other Magistrates out of Cities and Corporations, the King has sufficiently redress'd them, by restoring the first to their Places, and by putting all the rest into Commission again, and turning out those that came in their Rooms, and all this before the Prince of *Orange* came over; and I doubt not but his Majesty would have been content to have given the Nation any other reasonable Satisfaction they could have desired in the next Parliament: Which ought to have been patiently waited for until his Majesty thought fit to call it, without going about to right our selves by Force.

F. I confess you have made not only the most plausible Defence you can of the King's late Actions, but have also urg'd the utmost that can be said against those defensive Arms that have been lately taken up by those Lords, Gentlemen, and others who have associated themselves to stand by the Prince of *Orange*, till our Grievances were redress'd by a Free Parliament: But if what you have said be strictly look'd into, I doubt it will prove but a mere Subterfuge to hide the Nakedness of the Cause you have undertaken. In the first Place therefore, let me me tell you, that though I confess the King has not yet Dragoon'd us to *Mass*, nor has made an actual War upon the Lives and Properties of the People of this Nation; yet that he has not only invaded our Liberties, but also endanger'd the Protestant Religion of the Church of *England* establish'd by Law, you your self have not the Confidence to deny; only you will not suppose it to have been done by any Armed Force, and therefore ought not to have been resisted by Force, but to have waited for their Redress by Parliament; which is but an Evasion: For in the first Place it is plain, that the Things complain'd against, in the Prince of *Orange*'s Declaration, do most of them strike at the Fundamental Constitution, both of the Church and State, as I have sufficiently prov'd, and shall do it more particularly hereafter, when there is Occasion. All therefore that remains to be prov'd is this, That all these Breaches, and Violations of our Religion and Civil Liberties, though done under Colour of Law, yet were acted and maintained by

Force.

Force. And Secondly, That all other Hopes of Remedy or Redreſs, unleſs by joining with the Prince of *Orange*, was wholly taken from us. The firſt of theſe I prove thus: It is notoriouſly known, that for the King to maintain a Standing Army in Time of Peace, has been always declar'd againſt in Parliament, as contrary to Law, and dangerous to the Religion, Civil Rights, and Liberties of this Nation. Now it is alſo as certain, that the King has, ever ſince the Duke of *Monmouth*'s coming over, ſet up and maintain'd a Standing Army in this Kingdom; in which he has alſo put in as many Popiſh Officers, and they as many Popiſh Soldiers (contrary to the Laws of the Land) as ever they could find; beſides the many *Iriſh* Papiſts that have been of late ſent over, for no other Purpoſe than to be liſted here, and whilſt Proteſtant Soldiers were turn'd out of ſeveral Regiments to make room for them: Not to mention the liſting of vaſt Numbers of looſe and profligate Fellows, and ſome of them pardon'd Highway-Men, who, provided they had their Pay, would not have ſtuck to rob or murder any body they had been ordered; as may be ſufficiently prov'd, not only by their common taking of free Quarter, but by their frequent taking it in the Houſes of Gentlemen, and other private Perſons, in divers Places of this Kingdom; and that without any Amends or Redreſs as I know of, tho' frequently complain'd of at Court: All which being done by the King's Arbitrary Power, without the leaſt Colour of Law, and in Contempt of the Militia, the only legal Forces of this Kingdom, what was this but plainly to declare, that as the King had thought fit to act ſo many arbitrary Things clean contrary to Law, ſo he was likewiſe reſolv'd to maintain 'em by Force; ſince it is plain, that the King never durſt undertake to do all theſe Illegal and Arbitrary Things we have now mention'd, until ſuch time as his ſtanding Army was raiſed? And tho' it is true, Mens Lives, Liberties, or Eſtates cannot be taken away, unleſs by ſome Kind of Force; yet as for thoſe Civil Rights and Privileges, which are the main Bulwarks and Defences of the former, they can only be invaded or taken from us by illegal Judgments and Declarations; which if ſupported by a viſible Force beyond what the Nation (in the Circumſtances it was in) was able to reſiſt, this is as much a taking them by Force, as if there had been Reſiſtance made about them.

Thus, if Soldiers come into my Houſe, and ſay that the King hath given them Orders to quarter there upon free Coſt, I ſuppoſe you will not deny, but this is a forcible taking of my Goods, notwithſtanding I dare not (becauſe I cannot) reſiſt them. The ſame I may ſay for a whole Nation, when once oppreſs'd in their Civil Liberties, and thoſe Oppreſſions are once back'd and defended by a Standing Army contrary to Law: But that this Army was raiſed chiefly to this Intent, I can give you a remarkable Inſtance from the Mouth of the late Chief Juſtice *Wright*, who ſent for Officers and Soldiers to make the Scholars at *Oxford* keep ſilence, becauſe they humm'd at what the Preſident and Fellows of *Magdalen*'s had juſt before ſaid againſt the Authority of this pretended Court. So that to conclude; from that very time that the King began to keep up an Army, and to liſt Popiſh Officers and Soldiers, (tho' utterly diſabled by Law to take Commiſſions, or to bear Arms) by virtue of his Diſpenſing Power, and all this in Order to back and ſupport his Arbitrary Proceedings, I look upon this Nation under ſuch a Force, as that they might lawfully remove it by Force, whenever they could: And that either by joining with ſome Foreign Prince, or elſe by their own Domeſtick Arms.

But to come to the Second Point to be prov'd, *viz.* That there was no other Means but Force left us to redreſs thoſe Miſchiefs, and to retrieve us out of that ſad Condition in which we lately were, as alſo to hinder us from falling into worſe; I ſhall only ſuppoſe (that which I think you will readily grant) that there could be no other Means to cure theſe Evils, but either by ſome ſudden Change in the King's Inclinations, or elſe by a Free Parliament: The former you muſt acknowledge was not poſſible, as long as he continued of the Religion he is of, and ſuffer'd himſelf to be manag'd by the Counſels of the Jeſuits, and *French* King; and as for a Free Parliament, what Hopes could there be of that, as long as the King had done all he could to hinder Free Elections, and due Returns of Parliament-Men, by making either Popiſh or Fanatical Sheriffs, and putting Mayors and other

other Officers of the like Principles into moſt of the Cities and Corporate Towns in *England*? Nor can I tell but that Force would alſo have been uſed, if they found they could not have compaſſed their Deſigns without it, in thoſe Places where Soldiers were quarter'd; ſince I am credibly inform'd, that at the late intended Elections of Burgeſſes for *Northampton* and *Brackly*, the Officers and Soldiers quarter'd at thoſe Places, declar'd, That none of the Townſmen ſhould be admitted to give Voices at the Election, unleſs they would promiſe to Vote for thoſe that the Court would ſet up: And the like Inſtances I believe I might give you of other Places, had I time to enquire into it. And as for the Houſe of Peers, pray conſider how many of the Biſhops and Temporal Lords the King might have gain'd, either by Threats or fair Promiſes, to his Party, or at leaſt prevail'd upon to ſtand Neuters, and not to oppoſe his Deſigns; and if theſe had fail'd, it had been but calling up ſome Popiſh, or high Tory, or Fanatick Gentlemen to the Houſe of Lords, and to have ſat there as Barons, Peers, *pro tempore*, till this Job was done; and I doubt not but there would have been enough found out, of each Sort, for that Purpoſe. And that I do not ſpeak without Book, I have had it from Perſons of very good Intelligence, that ſuch a Deſign was lately on foot, and the Court Party thought they had very good Authority for it; ſince Mr. *Pryn* and Sir *William Dugdale* pretended to ſhow us ſeveral Examples of this Kind, as low as the Reign of K. *Henry* the IVth. And a great part of the Deſign of your Dr. *B.*'s late Books ſeem to have been only to prove, That the King might not only have Summon'd to Parliament what of the Commons he pleaſed, but what Lords too, and have omitted the reſt; as I have already ſhown you at our two laſt Meetings. And ſure, if the King had ſuch a Prerogative Two or Three Hundred Years ago, theſe Gentlemen would not have deny'd his preſent Majeſty the like Power; ſince they have, in all their Writings and Addreſſes, declar'd him as abſolute as any of his Predeceſſors.

But to make an end; As for what you ſay of the King's Redreſſing the Grievances of the Nation before the Prince of *Orange* came; it is very true, he did by the Advice of ſome of the Biſhops, endeavour to put Things into the ſame State they were in at his firſt coming to the Crown. But I very much miſtruſt the Sincerity of his Majeſty's Intentions, ſince it is plain he never offer'd to do it till the Prince of *Orange* was juſt upon coming, and that his Declaration had been ſpread about the Kingdom; and then he did it very unwillingly. And which is alſo more remarkable, his Majeſty, in none of his Declarations, ever diſowned his Diſpenſing Power, or ſo much as put out Father *Peters* from the Council, or diſbanded one Popiſh Officer or Soldier out of his Army: All which are no great Arguments of the Sincerity of his Intentions. So that I think this was ſufficient to convince any reaſonable Man, that there was no other Means left us but Reſiſtance, and that by Force, and a hearty joining with the Prince of *Orange* at his Landing.

Now, ſince this Reſiſtance was not made either in Oppoſition to the King or the Laws, but for Defence of both, againſt a Standing Army kept up contrary to Law, and headed by Officers, the greateſt Part of which, by not taking the Sacrament and Teſt, according to the Act made for that Purpoſe, had render'd themſelves wholly uncapable of holding thoſe Commiſſions, and conſequently whilſt in Arms were to be look'd upon as common Enemies to the Nation. But as for his Majeſty's Gracious and Merciful Diſpoſition, as I ſhall not make it my Buſineſs perſonally to reflect upon him, ſo I muſt needs tell you, the Execution of Mr. *Corniſh*, Mrs. *Liſle*, Mrs. *Gaunt*, for Treaſons falſly alledg'd, or elſe ſuch as Women could ſcarce be capable of knowing to be ſo, were no great Evidences of ſuch highly merciful Inclinations.

M. I confeſs you have taken a great deal of pains not only to ſet forth the late Miſcarriages of the Government, but alſo to prove that the Army which the King raiſed upon the Duke of *Monmouth*'s Invaſion, and which he hath ſince kept up to prevent either freſh Rebellions at home, or Invaſions from abroad, has been merely maintain'd to ſupport all theſe late Breaches upon our Laws and Civil Liberties, which you ſay were made upon them. Now this is very uncharitably done; for as his Majeſty was forc'd to raiſe that Army at firſt, becauſe the late Rebellion in the *Weſt* was too powerful to be quell'd by the ordi-

nary

nary Train'd Bands of the Kingdom, whom he had too much Reaſon to ſuſpect, by the running over of ſeveral of them to the Rebels, not to be ſo Loyal as they ought to have been: And if his Majeſty had not had a ſmall Body of an Army on Foot, the laſt Summer before the Prince of *Orange* came over, he muſt, upon his Landing, have yielded to his Terms, had they been never ſo unreaſonable. And though I will not defend the Liſting of Popiſh or *Iriſh* Soldiers, or the Granting Commiſſions to Popiſh Commanders, yet it is very hard to prove this to be a making War upon the Nation, unleſs you can ſuppoſe there may be War made without Fighting. And as for thoſe Violations of the Laws, which you ſuppoſe were made only upon the Preſumption of this Standing Army, this is likewiſe very hard to affirm; ſince how can you tell that the Judges and Miniſters would not have given the ſame Opinions and Advices, concerning the diſpenſing Power, Chimney-Money, and the Eccleſiaſtical Commiſſion, had there been no Army at all rais'd; ſince they might, for ought I know, have preſum'd that the People of this Nation had been ſufficiently convinc'd of the Truth of the Doctrines of Paſſive Obedience and Non-Reſiſtance, as not to have needed a Standing Army to back what he had already done, though contrary to Law. But as for the latter Part of your Diſcourſe, I ſay the People ought to have waited till the King had call'd a Parliament; and then if they had betray'd their Truſt, and given up our Religion and Liberties, as you ſuppoſe they would have done, it had been then Time enough, and not till then, for the Nation to have call'd in the Prince of *Orange* and his *Dutchmen* to their Deliverance. So that till this Parliament had been try'd, you could not ſay that Matters were altogether deſperate.

F. I ſee you do all you can to prove, that the King's Raiſing an Army, wherein he had Liſted ſo many Popiſh Officers and Soldiers, (and which were like to be daily increas'd upon us) was no making War upon the Nation, becauſe they had not yet actually robb'd or murder'd People; and you may with as much Reaſon tell me, that a Thief upon the Highway does not uſe any Violence upon the Party he robs, if he ſhould only clap a cock'd Piſtol to his Breaſt, without asking him to deliver his Money. Now, I ſuppoſe, you will not deny, but that the Paſſenger would quickly underſtand the Meaning of that Sign, and would ſoon deliver his Purſe, for fear of loſing his Life. Apply this to the taking of the Cuſtoms contray to Law, and to the Chimney-Money that has been rais'd upon the poorer Part of the Nation, and the taking away the Charters from the Corporations, merely through the Terror of this Standing Army; and ſee if the Similitude does not exactly fit. And for what you ſay, concerning the preſuming upon the Doctrine of Paſſive-Obedience, and ſo might have done the ſame Arbitrary Things, whether he had raiſed an Army or not; though I am very glad you confeſs, that thoſe Doctrines encouraged the King's Arbitrary Proceedings, yet I muſt beg your Pardon, if I cannot believe the reſt. Whatever Thoughts the King might have of the Major Part of the Clergy, Nobility, and Gentry, yet certainly he had no ſuch good Opinion of the ordinary People, who compos'd the *Militia*, (and indeed are the Hands of the Kingdom) ſince you confeſs the King did not look upon them as ſufficiently Loyal, and therefore was forc'd to maintain a Standing Army for fear of them. So that it ſeems the Nation was not yet thoroughpac'd in your Doctrines of Paſſive-Obedience and Non-Reſiſtance, as you would have had them; but that even this Standing Army, when it was to Fight againſt the Religion and Liberties of their own Country, was not to be truſted, the King himſelf was convinc'd of, when he lately left them at *Salisbury*; and becauſe ſome of them deſerted him, he feared the reſt would not Fight, in ſo unjuſt a Quarrel.

But as for the reſt of your Speech, that the People ſhould have tarried till Matters had become altogether deſperate, and that a Parliament had actually given up our Religion, Civil Liberties, and Properties, to the King's Arbitrary Will; that had been indeed entailing Slavery upon us by a Law, and would have made good the Proverb, of ſhutting the Stable Door after the Horſe is ſtolen; and puts me in mind of a Story I have heard of a Gentleman, whoſe Houſe being beſet by Thieves, who were actually breaking in at a Window, and

and that he was about to ſhoot at them, his over-ſcrupulous Chaplain (who I ſuppoſe had nicely ſtudied your Doctrine of Non-Reſiſtance) deſired his Patron to forbear, becauſe the Thieves had not as yet ſufficiently declar'd their wicked Intentions by aſſaulting or robbing any Body in the Houſe: But I ſuppoſe the Gentleman was not ſuch a Fool as to take his Chaplain's Advice; and a great Part of the Nation was more ſenſible of the Dangers they ſaw hang over their Heads than to follow your Opinion.

M. I ſee you are very free in your Compariſons, in making the King's late Army little better than Thieves; and then what Opinion you have of the King himſelf who headed 'em, I leave it to your ſelf to conſider; but ſince Similitudes are no Arguments, I ſhall not trouble my ſelf to argue this Point any longer with you, ſince I ſee it is to little purpoſe. But yet let your Right of Reſiſtance be what it will in deſperate Caſes, yet I am ſure that divers Lords and Gentlemen of your Opinion can no way juſtify their renouncing all Allegiance to his Majeſty, by adhering to a Foreign Prince, and by their late adviſing the ſame Prince to call a Convention, without taking any Notice of the King, or making any more Adreſſes to him about it, than if he had never been their anointed Sovereign; and indeed it was a great Shame, as well as a crying Sin, for the Nobility, Gentry, and People in and about this great and populous City to let their King be hurried away Priſoner by a Handful of *Dutchmen*, tho' his Majeſty hath had ſince the good Fortune to eſcape out of their Hands, when he ſaw there was no other Means to help him.

F. In anſwer to what you have now ſaid, I muſt freely tell you; that if the Reſiſtance that hath been made againſt the Army commiſſion'd by the King was lawful, ſo has all that has been done in Purſuance of that Reſiſtance been alike lawful and neceſſary; and therefore what if I ſhould tell you that the King by breaking the fundamental Conſtitution of the Kingdom, and by twice going away without ever offering to repair thoſe Breaches, and give the Nation any ſufficient Satisfaction for the ſame, has not only put himſelf in a State of War againſt the People, but has alſo thereby ceaſed to be King; or if you will have it more plainly, has loſt and forfeited his Right to the Crown.

M. This is a rare Commonwealth Doctrine, and of the ſame Batch with that of *Bradſhaw*'s and *Cook*'s Speeches againſt King *Charles* the Firſt; but I thank God I have learned loyaller Principles, and do firmly believe, that a King of *England* cannot for any Tyranny or Breach of Laws whatſoever, forfeit his Crown or Royal Dignity, as you ſuppoſe. But ſince this is a new Doctrine, I ſhall not be unwilling to hear what you have to ſay upon this Subject another Time, ſince it is now too late to purſue this Argument any further.

F. Before I make any Reply to what you have now ſaid, I deſire not to be miſunderſtood, as if I call all the King's late Army Thieves, or himſelf the Captain of them, ſince in Similies it is ſufficient if they agree in ſome common Property, without being the ſame Things to which they are compar'd; tho' this much I may ſafely ſay, that thoſe that take Free Quarter without Conſent of the Owners in Time of Peace, and thoſe who ſupport 'em in it, are no better than Thieves; but ſince you deſire to hear my Reaſons for this Opinion I have now given you, I deſire that we may have another Meeting to debate this weighty Queſtion: and then I will likewiſe hear whatever you have to ſay againſt it. But I muſt tell you by the way, that you are very much out in making my Opinion of the ſame Batch with that of the Regicides; for it appears plainly by the printed Tryal of King *Charles* the Firſt, that they acknowleged him for King of *England* at the ſame Time when they read his Indictment; whereas I affirm the contrary, and ſay that the preſent King cannot be judged or depoſed by the Parliament or People; yet that he has without any Act of ours abſolutely abdicated the Government, and depoſed himſelf: But that I may not ſeem to ſpeak out of any Prejudice to this King's Perſon or Government, I deſire we may firſt debate it in general, whether a King of *England* can ever fall from, or forfeit his Royal Dignity,

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let him behave himſelf never ſo like a Tyrant: And when that is diſpatch'd, it will be then Time to conſider, whether the King has ſo behaved himſelf or not.

M. I like your Propoſal well enough; only let me deſire you to come again as ſoon as you can; for ſince I hear there is like to be no Term, I intend to viſit ſome Friends in the Country, till I ſee the Times clear up a little better.

F. I will not fail to wait on you, within a Night or Two; and in the mean Time am your Humble Servant.

M. And I am Yours.

Bibliotheca Politica.

DIALOGUE X.

I. *Whether a King of* England *can ever fall from, or forfeit his Royal Dignity for any Breach of an Original Contract, or wilful Violation of the Fundamental Laws of the Kingdom?*

II. *Whether King* William (*the* Norman) *did by his Conqueſt acquire ſuch an abſolute unconditioned Right to the Crown of this Realm, for Himſelf and his Heirs, as can never be lawfully reſiſted or forfeited, for any Male-Adminiſtration or Tyranny whatever.*

M. HA! Are you come at laſt; I have looked for you theſe two Nights; and now began to fear you were not well, or elſe had diſtruſted your Cauſe, and declined another Conference.

F. I beg your Pardon for diſappointing you; which yet I had not done, had not ſome Buſineſs hindred me; but however, to let you ſee I do not decline another Conference with you upon this Subject, pray let us go on where we left off; and tell me freely your Senſe of my Notion of the King's Forfeiture, or Abdication of the Government by his Violation of the Fundamental Laws of the Kingdom, and Refuſal to repair thoſe Breaches, when he might have done it?

M In anſwer to your Demand, I will deal freely with you, and muſt tell you, that I have peruſed all Writers that have writ any Thing conſiderable concerning the Laws of Government, or of Nations; and cannot find in any of them any Thing to countenance your Notion of Forfeiture, or Abdication of an Abſolute Sovereign Prince, as I muſt ſtill take ours to be, notwithſtanding all you have yet ſaid to the contrary; unleſs what you have cited at our Third Meeting, out of *Barclay*'s Third Book *contra Monarcho-machos*; where he allows the Subjects to reſiſt their Prince, in caſe he go about to deſtroy the Body of the People or Commonwealth, whereof he is the Head: To which I may alſo add another Caſe which you have omitted, *viz.* If the Prince make over his Kingdom to another, without the Conſent of his People: And I confeſs, that both *Grotius* and *Puffendorf* agree with *Barclay* in this Notion: Becauſe they look upon both theſe Caſes, as plain downright Renunciations of their Civil Authority, over thoſe whom they were obliged to Govern. But indeed, the firſt of theſe Caſes is ſo improbable; nay, almoſt impoſſible to happen, that were it not for the over-great Niceneſs of theſe Writers, it need not to have been ſo much as mentioned; ſince none but a Madman, can ever go about to deſtroy his whole People; and therefore ſuch a Prince may be Reſiſted as a Man out of his Wits; and locked up, if ever it ſhould ſo fall out (as you your ſelf have confeſſed it hath very rarely) for a Nation to be ſo unhappy as to have ſuch a Prince; but as for the Second, *viz.* the making over their Supreme Power to a Foreign Prince; that likewiſe ſo very rarely

Vi. Grot. de Jur. Bell. L. 1. cap. 4. §. 7, 8. Puffendorf de Jure Nat. L. 7. cap. 8. §. 6, 7.

rarely happens, that it is ſcarce worth the while to make any Diſpute about it: But in all other Caſes, they held the Supreme Power of every Nation to be abſolutely Irreſiſtible in any Caſe whatſoever; and if irreſiſtible, then certainly uncapable of forfeiting their Right to govern, by any pretended, or real Violation of the Liberties and Privileges of the People. And *Bodin*, in his firſt Book *de Republica*, though he grant, that abſolute Princes are obliged in Conſcience to keep and maintain all ſuch Privileges which have been granted to the People by either themſelves or Predeceſſors, which are for the good of the Common-wealth; yet ſince the Prince is ſole Judge, whether theſe Privileges are conſiſtent with his Supreme Right to Govern and Protect his People, he may therefore have occaſion ſometimes, not only to Detract from them, or diſpenſe with them in ſome Caſes; but may wholly break and lay them aſide, by turning Tyrant; yet nevertheleſs in all theſe Caſes People are ſtill bound not to reſiſt them. And that he looked upon the King of *England* as ſuch an Abſolute Monarch, as well as others he there mentions, you may read in the Place I now cited; where after he has allowed Reſiſtance to be lawful againſt thoſe Princes, who were not properly Monarchs, as enjoying but a Share of the Supreme Power, and among which he reckons the *German* Emperor, and the Kings of *Denmark*, *Sweden* and *Poland*: But then, when he comes to ſpeak of Real and Abſolute Monarchies, his Senſe is quite different; as you may ſee by theſe Words; *Quod ſi Monarchia quædam eſt, ſummâ unius poteſtate conſtituta, qualis eſt Francorum, Hiſpanorum, Anglorum, Scotorum*, &c. (I ſhall ſlip all the reſt, becauſe not to our Purpoſe) *ubi Reges ſine controverſia jura omnia Majeſtatis habent per ſe; nec ſingulis civibus, nec univerſis fas eſt ſummi Principis vitam, famam, Fortunas in diſcrimen vocare, ſeu vi, ſeu Judice conſtituto id fiat, etiamſi omnium ſcelerum, ac Flagitiorum quæ in Tyrannis convenire antea diximus, turpitudine infamis eſſet.* Where you may obſerve that Force or Reſiſtance, by which ſuch an abſolute Prince's Life or Regal Power (here called *Fortunæ*) are as much forbid, as calling him in Queſtion by appointing Judges to ſit upon him. And he there gives us a very good Reaſon for it, Becauſe all *Subjects* of what Degree ſoever, cannot *pretend to any Coercive* Power over the Perſon *of a Sovereign Prince*.

Cap. 8.

Ib. Lib. 11. cap. 5.

F. We have diſcourſed enough concerning the Reſiſtance of Abſolute Monarchs, at our Third and Fourth Meeting, and therefore I deſire we may not fall again upon that Subject, which can produce nothing but needleſs Repetitions; and I have already proved, at our Fifth Converſation, that our King is not an Abſolute Deſpotick Monarch, but is limited and tied up by the Fundamental Laws of the Kingdom, from making of Laws, or raiſing Taxes without the Conſent of his People in Parliament; and that our Government is mixed, and made up of Monarchy, with an Allay of Ariſtocracy, and Democracy in the Conſtitution; the former in the Houſe of Lords, the latter in the Houſe of Commons, as K. *Charles* the Firſt himſelf confeſſes, in his Anſwer to the Parliaments 19 Propoſitions. And I have farther enforced this from divers Authorities out of our Antient as well as Modern Lawyers; *viz. Glanvill*, *Bracton*, *Forteſcue*, and Sir *Edward Coke*. So that ſince we have ſuch clear Proof for our Conſtitution from our own Hiſtories and Authors, nay from the King himſelf, beſides the whole Purport and Style of the very Laws and Statutes of the Kingdom, I do not value the Authority of *Bodin* a Foreigner, whoſe Buſineſs it is to ſet up the Authority of the *French* King to the higheſt Pitch he could; and therefore being ſenſible that antiently the Government of *France* and *England* were much the ſame, he could not with any Face make his own an Abſolute Deſpotick Monarchy, unleſs he had made ours ſo too; but this is not the only Error he has been guilty of in our Hiſtory and Conſtitution, as I can ſhew you when there is occaſion. But *Arniſæus*, who, as well as *Bodin*, is ſo much for Abſolute Monarchs, yet does in his Treatiſe of Government called his confeſs, *that a Tyrant in an Hereditary Monarchy, who violates all the Laws of Juſtice and Equity, to the endangering the Ruin of the Commonwealth*, doth *excidere Jure hæreditario, fall from, or forfeit his Hereditary Right*. But pray make it out by ſome convincing Proofs, either from Hiſtory, or Law, that our Kings are ſuch Abſolute Monarchs as you would make them, that by the fundamental Conſtitution of the Government they cannot be reſiſted, nor can fall from their Regal Power, let them carry themſelves never ſo Tyrannically; for I do not ſee you have been yet able to do it by any Arguments you have hitherto made uſe of.

M. I have already at our Fifth, as well as at our laſt Meeting, given you divers Arguments and Authorities, whereby I proved the Kings of this Realm to be compleat and abſolute Monarchs; eſpecially that Place from *Bracton*, where he thus ſpeaks of the King, That every one is under him; and that himſelf is under none but God; that he has no Peer in his Kingdom, becauſe ſo he would loſe his Power, ſince an Equal has no Command over an Equal; much more has he any Superior, becauſe then he would be inferior to his Subjects; and Inferiors cannot be equal with their Superiors. Which ſufficiently deſtroys that Notion of yours, That Subjects can be in any Caſe equal with their Princes, ſo as to judge and reſiſt their Actions. Which is alſo farther enforced by another Paſſage juſt aforegoing, *de chartis vero Regiis, & factis Regum, non debent, nec poſſunt Juſticiarij, nec privatæ perſonæ diſputare, nec etiam ſi in illis dubitatio ulla oriatur, poſſunt eam interpretari; & in dubiis, & obſcuriis, vel ſi aliqua dictio duos contineat intellectus, Domini Regis erit expectanda interpretatio & voluntas, cum ejus ſit interpretari cujus eſt concedere:* From which we may conclude, That the King's Actions were above all Cenſure and Diſpute, much more forcible Oppoſition of his Subjects. And I defy you to ſhew me any Paſſage in *Bracton*, *Fleta*, or even your beloved Author *Forteſcue*, that in the leaſt countenances your Doctrine of Reſiſtance, much leſs your Opinion of the King's Forfeiture of his Crown and Royal Dignity for Tyranny, for the higheſt Violation of Laws; but rather the contrary, in all thoſe Paſſages that I have either obſerved my ſelf, or found quoted out of them by others. For though I grant both *Bracton* and *Fleta* call the King, if he prove a Tyrant, or one that governs contrary to Law, not God's but the Devil's Miniſter; yet for all that, they no where maintain, that then he ought, or may be reſiſted by his Subjects; or that they are diſcharged of their Allegiance towards him. For *Bracton* tells us, in the ſame Place, That if the King do any Man wrong or Injury, *Locus erit ſupplicationi quod factum ſuum corrigat, & emendet; quod quidem ſi non fecerit, ſatis ſufficit ei ad panam, quod Dominum expectet ultorem; nemo quidem de factis ſuis præſumet diſputare, multo fortius contra factum ſuum venire.* The ſame he ſays likewiſe word for word in another Place, of any other King or Prince, who has no ſuperior Lord, againſt whom there is no Remedy by Aſſize (or legal Trial) as againſt an Equal, but only Place left for the injured Subject to Petition. And *Bracton* gives us a very good Reaſon for it in this *Maxim, omnis quidem ſub eo, & ipſe ſub nullo niſi tantum ſub Deo.* So that though I grant this Moral Obligation, which the King hath to obſerve the Laws, is farther increaſed by his Coronation-Oath, as *Bracton* obſerves in his Third Book *de Actionibus*: But then, as in the Oath of Allegiance, the People ſwear nothing to the King, but what they are bound to obſerve unſworn: So the King in his Coronation-Oath promiſes nothing to the People, but what in Juſtice and Equity he is bound to perform, whether he ſwear or not: For, *ad hoc* (ſaith the ſame Author of the King) *electus, & creatus eſt ut Judicium faciat univerſis, &c.* and *ſeparare debet Rex, cum ſit Dei vicarius, Jus ab Injuria, &c.* But then if he will pervert this great End, for which God made him King; if he will not act as it becomes God's Vicar; if he will obſtruct or pervert the Laws, and govern never ſo Tyrannically; yet ſtill there is left no Remedy to his Subjects by the Law, but Moral Perſuaſion: For the Laws Imperial of this Realm, have declared him to be a free, unconditioned, and independent Sovereign, exempted from all Coertion, and outward Force, much more from any Forfeiture of his Crown or Regal Authority.

L. 1. Cap. 9.

Lib. 2. cap. 7.

H. 7. p. 244, 245. cap. 9.

F. I hope I ſhall be able to return you a ſatisfactory Anſwer to the Authorities you have now brought: For, as for Reaſons I ſee none. In the firſt Place, as to what you ſay concerning *Barclay*'s, and all other Writers agreeing, that in theſe Two Caſes you mention, the People may reſiſt their Prince, becauſe he does as good as renounce the Government of them, and abdicate the Crown he wore: Pray obſerve, that they alſo allow the People to judge for themſelves, when the King thus goes about to deſtroy them, to make over his Crown to a Foreign Prince. Now I deſire you to ſhew me, why the People in a limited or mix'd Kingdom (as ours is) cannot as well judge when the King has broke the Fundamental Laws of the Government, whereby it is diſtinguiſhed from an Abſolute Deſpotick Monarchy; and hath either actually ſet up, or is going about to bring in Tyranny or Arbitrary Power; ſince according to the Rules I have laid down at our laſt Meeting, the Matters to be judged of may be as plain and evident, not only to a ſingle Perſon, but to a whole Nation. All that you have

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to ſay againſt this is, only an Hypotheſis you have laid down, without any juſt Grounds, That the King is a Sovereign Prince, who holds his Crown without any Condition whatever; and therefore free from all Forfeiture of his Crown, or Regal Authority; which is the Point to be prov'd. Now if I have already made out (as I ſuppoſe I have) that the King of *England* is not ſuch an Abſolute Monarch, as not having the two main Parts of it, *viz.* the Power of raiſing Money, and making Laws, in his own Diſpoſal, without the Conſent of his People; and theſe reſerv'd to them by his own Conceſſions, or that of his Predeceſſors, from the very beginning of Kingly Government in this Iſland; and if I have alſo proved at our laſt Meeting, that if we have ſuch Fundamental Rights, we have alſo ſome Means left us to keep and preſerve them inviolable; and that this Means is only a defenſive Reſiſtance, in caſe they are forcibly invaded by any of the King's Officers or Soldiers, nay, by his own perſonal Power, if he ſhall be ſo ill adviſed as to join himſelf with ſuch Inſtruments of Tyranny; it will then alſo follow, that ſuch a Reſiſtance is really a Suſpenſion of their Allegiance to the King for the Time it laſts; and till they can ſee whether there be any Hopes left of a Reconciliation with him, and that he will amend his Errors and Miſgovernment. And if he does ſo, and that he will give his People any ſufficient Teſtimony of his Amendment and Sincerity, by giving up ſuch evil Miniſters to Puniſhment, that put him upon ſuch deſperate Courſes; I do then readily grant, that the People ought to lay down their Arms, and be again reconciled to their King, and ſubmit themſelves to him as before, according to that Clauſe in King *John's Magna Charta* I have already cited, wherein there is a Power left for the Barons, in caſe of any Breach of it, to take Arms, and conſtrain the King by taking of his Caſtles, Lands, and Poſſeſſions, to amend thoſe Tranſgreſſions; and when all was thus amended, the Charter ſays, *Tunc cum fuerit emendatum* (then and not before) *intendent nobis ſicut prius fecerunt*, they ſhall be ſubject to us, as they were before. But what followed upon this? The King not only refuſed to obſerve this Charter, but procured the Pope's Diſpenſation to be abſolved from the Oath he had taken to obſerve it; and alſo raiſed what Forces he could at home, and ſent for Foreigners into this Kingdom to ſupport his Tyranny; whereupon the Barons at laſt were forced to renounce all Allegiance to him, and to declare he had forfeited all Right to the Crown by his Tyranny and Perjury towards his People; as *Mat. Paris* and other Authors ſhew us at large. Now what the Barons did in the Caſe of King *John*, may be alſo done by the People of this Kingdom in all ſucceeding Times; or otherwiſe, the King will be in a better Condition after he has done the worſt he can by Force of Arms againſt the People, than he was before; for if (as I have already proved) he may be reſiſted, till he give the Kingdom Satisfaction that he will ſurceaſe from ſuch Tyrannical Courſes; and if ſuch Reſiſtance is really a Suſpenſion of Allegiance for the Time it laſts; it will likewiſe follow, that if the King will ſtill perſiſt in theſe wicked Courſes, he muſt at laſt forfeit his Crown, and diſcharge his Subjects of all Allegiance to him; or elſe he would be in a better Condition, by his wilful perſiſting in his Tyranny, than he could by quitting it, and reconciling himſelf to his People: For whereas by this Method the beſt he can expect is to return to the Exerciſe of the ſame Limited Power he before enjoyed; if he puſh Things to the utmoſt Extremity, he may, perhaps, get the better of his People, and then will ſet up for an Abſolute King by Conqueſt; or if he fail in that, and be beaten, or taken Priſoner by them, he can loſe nothing, ſince by your Principles he ſtill continues an Abſolute Sovereign Prince, as he was before, and muſt be immediately put in the ſame State and Ability of deſtroying the Government, and enſlaving the Nation. But your Civil, as well as our Common Law, has a very good Maxim, *Nemo ex proprio Delicto beneficium capiat*, no Man may take Advantage of his own Wrong; and therefore ſuch a Prince ought certainly to loſe, and not to gain any thing by his own Illegal and Tyrannical Actions; and therefore I grant, that the King is not tied, by his Coronation-Oath, to obſerve any new things that he was not, before he was Crown'd, bound to do; only there is the higher Obligation of an Oath added thereunto. So if the King be a Limited Prince, whoſe Authority depends upon the right Exerciſe of it, and that he can claim no Allegiance of his Subjects but upon that Condition; if ſuch a Prince wilfully breaks all thoſe Conditions, and abſolutely refuſes to amend, he muſt at laſt forfeit his

Crown,

Crown, and loſe all Allegiance from his Subjects, or elſe all their Reſiſtance would ſignify juſt nothing; and they would after all be in a much worſe Condition than they were before.

Now if this be ſo, all your Quotations out of *Bracton* and *Fleta* will ſignify nothing: 'For, as *Puffendorf* very well obſerves, a Supreme Power may reſide in a 'Limited King, in reſpect of all his particular Subjects; yet they may all together have a Right to diſobey him in thoſe things to which his Power does not 'extend: For, ſays he, it does not follow, that becauſe I am not bound to obey 'him in all things, therefore I muſt be his Equal or Superior; or becauſe I cannot in any wiſe command him, therefore he may enjoin me what he pleaſes. 'For *Supreme* and *Abſolute* are by no means one and the ſame; for the former denotes the Abſence of a Superior, or an Equal in the ſame Order, but the latter 'a Faculty of exerciſing all the Rights of Government, according to his own 'Judgment and Will:' And therefore this Author in the next Chapter ſays very rationally concerning reſiſting of Tyrants in extreme Caſes, 'That their Scruple 'is nothing, who will not admit any Liberty of reſiſting the moſt cruel Tyranny 'of Rulers, becauſe there cannot be ſuppoſed any lawful Call of Subjects taking 'Arms againſt the Supreme Power, ſince no Juriſdiction can belong to any Subject 'over ſuch a Power: As if (ſays he) that Self-defence were an Effect of Juriſdiction, or that there is required any peculiar Call or Precept for Men in caſe 'of extreme Neceſſity to defend themſelves, and to repulſe any unjuſt Force 'from taking away their Lives or Eſtates; any more than there is for thoſe who 'are like to ſtarve, to allay their Hunger by eating, tho' it may be the Meat they 'eat is not their own, but another Man's.' So far he. And if this be lawful even in Abſolute Monarchies, in caſe of Defence of Life, the ſame, I ſay, may be alſo by the ſame Reaſon exerciſed in Limited Kingdoms, when the King goes about by Force to take away the Religion, Lives, Eſtates, or Liberties of the People, contrary to Law; ſince both are founded upon the ſame Principle, that a King, by deſtroying the Fundamental Laws and Conditions by which he is to govern, renounces the Government; and indeed ſo far diſſolves it, that he ceaſes to be King.

L. 7. c. 7. § 7. 10.

Lib. 7. cap. 8.

And tho' I grant *Bracton* and *Fleta*, and other old Lawyers, have not in expreſs Words taught this Doctrine, yet they do it in effect; ſince the former tells us, *Non eſt Rex, ubi dominatur voluntas, & non Lex*; that is, he is not a King, when his own Will, and not the Law governs: And in another place, *Rex eſt dum bene Regit, Tyrannus dum Populum ſibi creditum violenta opprimit dominatione*; and in the very ſame place, (as you have alſo obſerved) he tells us, *exercere debet Rex poteſtatem Juris, ut Vicarius & Miniſter Dei, poteſtas autem injuriæ Diaboli eſt, non Dei; cum declinat ad injuriam Rex, Diaboli Miniſter eſt.* Now, if what *Bracton* ſays be true, that the King, when he does Injury, is the Devil's Miniſter, and not God's; I cannot ſee how he can then act as God's Lieutenant; or why it is not as lawful to reſiſt the Devil's Miniſter, as the Devil himſelf. And as to what you alledge out of the ſame Author, that there is no Remedy left againſt the King, in caſe he does Wrong, or oppreſſes any Man, but only Petition; and after that, the only Remedy is *expectet Deum ultorem*, in caſe he refuſe to do Right: This is to be only underſtood of Remedy in ordinary Courts of Juſtice, and by ordinary Means; for otherwiſe this Author would contradict himſelf; whereas he tells us expreſly, (as I have already noted out of *Bracton* and *Fleta*) *in Populo Regendo Rex habet Superiores, Legem per quam factus eſt Rex, & Curiam ſuam, viz. Comites & Barones*, that is, the higheſt Court of Parliament, called by way of Eminency, the *Earls* and *Barons*; who, he here ſays, *debent ei frænum imponere*, in caſe he tranſgreſs the Law; and therefore if he go on ſtill wilfully to violate all the Fundamental Laws of the Kingdom, by the ſame Power by which they may put this Bridle upon him, by the ſame Power may they alſo declare (in caſe of manifeſt and downright Tyranny,) that he has forfeited his Crown; and tho' they cannot depoſe him as his Superiors, yet they may declare that he hath by violating the *Original Contract* between him and his People, ceaſed to be King, and that both themſelves and all his Subjects are diſcharged of all Allegiance to him.

Lib. 1. c. 8.

Lib. 9. c. 9.

And agreeable to this Opinion, the old *Mirrour of Juſtices* tells us in the Place I have formerly cited at our Third Meeting, That tho' the King have no Peer in the

the Land, nevertheleſs, if by his own Wrong, he offends againſt any of his People, none of thoſe that judge for him, (*i. e.* none of his Juſtices) can be both Judge and Party. Therefore it is agreeable to Right, that the King ſhould have Peers or Companions to hear and determine in Parliament all Writs and Complaints concerning the Wrongs of the King, Queen, and their Children, of which Wrongs they could not otherwiſe have common Right. Now can any one imagine that any private Perſon might have Right againſt the King, or his Queen, and Children; and that there ſhould be no Remedy left for the general Oppreſſion, and Violation of the Laws and Rights of the whole Nation in general, and that whether the King would or not? For if it had lain in his Power to have hindred it by diſſolving the Parliament, this Law had been wholly in vain. So that this will ſerve to anſwer your other Quotation out of *Bracton*, concerning the King's Charters, or Grants, (for ſo I ſuppoſe *factis* is to be rendred in this Place) That no private Perſons, no, not the King's Juſtices, could in thoſe Days take upon them to diſpute about, or interpret their Meaning; but it was to be left to the King himſelf. But how? Not to his private Interpretation in his Chamber, or Privy-Council, but to his Interpretation in his Great Council in Parliament; which, as I proved in our Fifth Meeting, conſiſted of all the great Officers of the Crown, together with the Judges; who, the King being preſent, were in the Nature of Counſellors or Aſſeſſors to him; and there all Matters not determinable in ordinary Courts, were heard and determined; and of this Nature were the King's Charters; tho' now that Power, ſince the Diſſolution of that great Court, is fallen partly to the *Chancery*, and partly to the *King*'s *Bench*, who do both of them at this Day judge of the King's Grants, whether they are according to Law, or not; and can declare them to be void, if they are not.

M. This is right *Rump-Parliament Doctrine*, or rather worſe, (if worſe can be;) for whereas *Bradſhaw*, and thoſe Mock-Judges, appointed by that pretended *Junto*, plainly aſſerted an Inherent Right in the People of *England*, and the Parliament, as their Repreſentatives, to call the King to an Account, and to judge and condemn him, as his Superiors; you, to evade that Doctrine, as being expreſly condemned both by the Firſt and Second Parliament of King *Charles* II. in the Statutes I have already cited, do fall into a much more dangerous Error. For whereas thoſe Men ſuppoſed it was only in the Parliament (and in themſelves, as the Commons of *England*), to judge and depoſe the King, and to put him to Death for Tyranny; you take this Power out of their Hands, and place it in every private Perſon, which you call the *diffuſive Body* of the People; which are not only more fallible, but more dangerous Judges, as being more apt to Errors and Miſtakes. But if you would have better conſider'd the Words and Meaning of that Act I have formerly cited of King *Charles* II. for attainting the Regicides, you would there find theſe Words in the Preamble to that Act expreſly againſt you: 'Whereby it is by both Houſes of Parliament declar'd, That by the un-'doubted and Fundamental Laws of this Kingdom, neither the Peers of this 'Realm, nor the Commons, nor both together in Parliament, *nor the People col-'lectively*, or *repreſentatively*, nor any *other Perſons whatſoever*, *ever had*, have, 'hath, or ought to have any Coercive Power over the Perſons of the Kings of 'this Realm.' Where you ſee by this Act, that all Power of judging or depoſing the King is expreſly renounced, not only for the Two Houſes of Parliament, but for the whole People, whether collectively, or repreſentatively, or for any other Perſons whatſoever. But as for what you ſay, that the King in caſe of a wilful and conſtant Violation of the Fundamental Laws of the Kingdom, is not then depoſed by the People, but depoſes himſelf, and thereby renounces the Government over them; this is a meer Evaſion, which you, and thoſe of your Party, have now found out to make the King to have forfeited his Crown, without any Judgment of the Parliament or People; for who can believe a King will ever depoſe himſelf, or do any Act, beſides an expreſs Reſignation of the Crown, whereby he can ever be conſtrued to have parted with it. And therefore your Notion is no better than the Equivocation of the Jeſuits; who, if they are ask'd whether it be lawful or not for Subjects to murder their Kings, will tell you by no means; but it is ſtill with this mental Reſervation, that Princes excommunicated and depoſed by the Pope, do thereby ceaſe to be Kings; and therefore their Subjects being thereby diſcharged of all their Allegiance to them, they may not only be reſiſted,

12 *Car.* 2. c. 30.

reſiſted, but murdered by them as Tyrants and Uſurpers. Put the People here inſtead of the Pope, and ſee if the Parallel does not hold exactly.

But as to your Argument, from a Neceſſity of Reſiſtance, to a Neceſſity of laying the King aſide, becauſe he has forfeited all Rights to the Crown, upon his perſiſting in the Violation of the Fundamental Laws, and refuſing to make the People Satisfaction, and this upon the Account of I know not what Original Contract; for as to the Coronation Oath, I ſee you dare not inſiſt upon it; ſo that I do not now wonder that the Gentlemen of your Principles are ſo violent for this Right of Reſiſtance, ſince it is only in order to introduce your Darling Doctrine of the Peoples Power of depoſing or laying aſide their Kings (as you term it) whenever they ſhall judge they turn Tyrants, and have thereby forfeited their Crowns; which is a moſt dangerous Doctrine: And if it ſhould take Effect, Princes had need look about them, ſince the People may make up ſuch a Pretence (for ought I know) even againſt the very beſt of them, that are now Regnant in *Europe*.

But ſure abſolute Monarchs ought not to be outed of their Crowns by ſtrained Conſequences, or forced Interpretations of Laws; therefore pray ſhew me this Original Contract you ſo much inſiſt upon, and thoſe Conditions on which you ſuppoſe our limited Monarchs hold their Crowns. I confeſs if you could ſhew me any Clauſe in our Laws, or Ancient Forms of the Coronation of our Kings, as there was at the Coronation of the Kings of *Arragon*, wherein the Chief Juſtice on the behalf of the People plainly told him, that they made him King upon this Condition, that they would have more Power than himſelf; or that in the conferring of the Regal Power, it was expreſly reſerved in what Caſes it ſhould be lawful for them to reſiſt the King, or to abſolve his Subjects of their Allegiance, as *Bodin* tells us it was expreſly inſerted in the Coronation Oath of *Henry* II. Duke of *Anjou* (afterwards King of *France*,) when he was made King of *Poland*; that if he broke his Oath and violated the Laws and Privileges of the Clergy and Nobility of *Poland*, then the People of that Kingdom ſhould not be obliged to render him any Obedience: I grant then, that the Liberties of ſuch a People might be preſerved. But the King that took upon him the Regal Power upon ſuch Conditions, would not be propetly a Monarch, but an Inferior Prince, liable to the Judgment of his People, whenever he really did, or that they imagined he had thus violated their Laws, ſince the Supreme Authority would ſtill reſide in them.

Vid. Hottoman Franco-Gallia.

But indeed the Caſe (God be thanked) is much otherwiſe with our Monarchs who are Kings by Right of Inheritance, whether ever they take any Coronation Oath, or not: As King *Edward* the Firſt was, whilſt he was in the *Holy-Land* almoſt Two Years before he could come over to be Crown'd; and King *Henry* the Sixth was not Crowned till the Eighth Year of his Reign, as well as of his Age. But that our Kings are ſo by Inheritance, and by the Laws of God and Man, previous to any Coronation Oath, or Conſent of the People, is expreſly declared by the Act of Recognition of King *James* I. And that Treaſon could be committed againſt him before he was Crowned, Sir *Edward Cooke* tells us in *Calvin*'s Caſe, was the Opinion of all the Judges of *England* on the Plot for which *Watſon* and *Clerk* the Prieſts were Executed, and Sir *Walter Rawleigh* Condemned. So that what you have now urged from Reaſon, or Authority of our Ancient Lawyers, is either quite miſtaken, or elſe does not reach the Matter in Hand: That it cannot be made out from Reaſon, is plain; ſince your whole Argument is built upon this falſe Foundation, that it is lawful in ſome Caſes to reſiſt the King, as upon a notorious Breach of the Fundamental Laws, and therefore it is neceſſary alſo to declare him to have forfeited his Crown, if he perſiſt in this Violation; whereas I deny your Aſſumption, for I hold it utterly unlawful to reſiſt on any Pretence, or for any Cauſe whatſoever: And therefore it is impoſſible for the King, who (as I ſaid but now) is an abſolute unconditioned Monarch, to forfeit his Crown for any ſuch Violation of your Original Contracts, or Fundamental Laws of Government. So that let me tell you, the Citations you have brought out of Hiſtory, as alſo *Bracton* and *Fleta*, do not prove either the one or the other of theſe. For Firſt, As to the Clauſe in King *John*'s Charter concerning Reſiſtance, and the Barons having a Power thereby to conſtrain the King to amend his Violations of it, by making War upon him, and that they ſhould

Vid. Cook's 7th Reply.

not

not return to their former Allegiance till all was redreſſed; make the moſt of it, it could be no more than a particular Conceſſion for himſelf alone, and was not intended to reach his Succeſſors, who are not at all mentioned in this Clauſe. And that it was never intended to reach them, may further appear, becauſe that this Clauſe of Reſiſtance is omitted out of all the ſubſequent great Charters, that were granted by *Henry* III. or his Son *Edward* I. and inſtead of this, it was thought a ſufficient Security upon the laſt Confirmation of theſe Charters in the 37th Year of King *Henry* III. for the Kings, Biſhops, Earls, and Barons to agree, that the Archbiſhop of *Canterbury*, and all the reſt of the Biſhops, ſhould declare all thoſe that wilfully tranſgreſſed or infringed the great Charters in any Point, excommunicated *ipſo facto*, not excepting the King himſelf, according to the Form which you will find in *Mat. Paris*, and other Writers of this Tranſaction. But for the Places you have cited out of *Bracton*, there is none of them reach the Point in Queſtion; for as to the firſt, *Non eſt Rex ubi dominatur voluntas & non Lex*; the Meaning of it is, not that he is no King, but that he does not act as a King, but a Tyrant, when he thus governs by his meer Will, and not by Law. And to the ſame Effect is the next Paſſage, *Rex eſt, dum benè regit*; *Tyrannus, dum Populum ſibi tradidum violenta opprimit dominatione*; all which we readily grant: Yet ſince he is ſtill an abſolute Monarch, all Writers hold, that his governing without or againſt Law, cannot give the Subjects a Power to reſiſt him, much leſs can it be conſtrued as a Renunciation or Forfeiture of his Imperial Power. And therefore tho'it is true, that as *Bracton* and *Fleta* tell us, whilſt he thus acts, he does not act as God's Lieutenant, but the Devil's Miniſter; yet does it not follow that we may therefore reſiſt him with carnal Weapons, or Force; ſince we cannot ſo reſiſt the Devil himſelf. And tho' he may in this Matter of Breach of the Law, which he has ſworn to obſerve, act as the Devil's Miniſter, yet notwithſtanding in all other Points of Government, as in the Puniſhment of Robbers, and other notorious Offenders, and in the due Adminiſtration of Juſtice between Man and Man, he ſtill acts as God's Lieutenant; and it is much better that we ſhould have ſome Civil Government, tho' mixt with Tyranny and Oppreſſion, than that we ſhould fall into all the Miſchiefs and Confuſions of a Civil War, nay, that Anarchy too which has often been produced by it. And tho'I confeſs the laſt Place you have made uſe of, to wit, *Rex habet Superiorem, Legem, & Curiam ſuam*, viz. *Comites & Barones, &c.* who ought, if he tranſgreſs the Law, to put a Bridle upon him; yet by this (as I have already proved) neither *Bracton* nor *Fleta* could mean any co-active Force, but only a Moral Reſtraint upon the King by Petitions, Remonſtrances, or denial of Aids, till he would be reform'd by fair Means: But that it does not go farther, appears by the Parallel *Bracton* there makes between our Saviour *Chriſt* and the Virgin *Mary*, who being both free from the Law of *Moſes*, yet voluntarily choſe to be obedient to it; which ſufficiently proves that thoſe Authors never deſigned that the Parliament ſhould make the King, by Force, or whether he would or no, to amend his Faults; ſince that was, as you your ſelf muſt acknowledge, againſt their very Inſtitution; ſince both their Meeting, and their Diſſolution, wholly depend upon the King's Will.

F. I confeſs you have made a long and elaborate Speech in anſwer to my Opinion, that the King may forfeit his Crown, that is, by his own Act ceaſe to be King; but I ſhall be able to give you a ſatisfactory Anſwer to all this, if you pleaſe to take it. In the firſt Place therefore I cannot but obſerve, that all your Diſcourſe depends upon Two Principles, alike falſe; firſt, that no abſolute Monarch can by his own Act forfeit or loſe his Right to the Government, without a formal Reſignation of the Crown: Secondly, That the Kings of *England* have ever been ſuch abſolute Monarchs. Which if they are both great Miſtakes, all that you have ſaid on this Head falls of it ſelf. Now that a King, tho' an abſolute Monarch, may do ſuch an Act as ſhall make a Forfeiture of his Crown, without any ſolemn Reſignation of it, you your ſelf are forced to allow, in the Two Caſes you have put, *viz.* that of ſuch a Monarch becoming an open Enemy to his People, and going about to deſtroy them; and that of his making over his Kingdom to another, without the Peoples Conſent. Now if the diffuſive Body of the People in an abſolute Government, can judge of theſe Two Caſes whenever they happen, without appealing to any general Council, or Aſſembly of the whole Nation; I deſire to know (for you have given me no Anſwer to this Queſtion)

Why it may not be as eaſy and lawful for the the People to judge without a Parliament, when the Fundamental Laws of the Conſtitution are generally and wilfully broken and violated; and that Violation perſiſted in by the King, for the Introduction of Tyranny and an Arbitrary Government? Since the Rules I have laid down to know it are but a few, and eaſy to be known and judged of by the moſt common Capacities.

Now that a Superior or Governor may loſe all that Power and Authority he once had, and that without any Act of the Party governed, may appear by thoſe great and natural Relations of a Huſband and a Maſter; in the former of which, if a Huſband, in the State of Nature, uſe his Wife ſo cruelly, that ſhe can no longer live or cohabit with him without Danger of her Life, I doubt not but ſhe may quit him; and may alſo when ſhe is out of his Power, marry her ſelf again to another Man that will uſe her better: So in the other Relation of a Maſter, if ſuch a one, in the State of Nature have a Slave, and will not allow him ſufficient Cloaths, Victuals, or will beat him, or uſe him ſo cruelly for no juſt Cauſe, that he cannot enjoy the ordinary Comforts of Life; no Man will deny but that ſuch a Slave may lawfully run away from ſuch a Maſter, and is at Liberty either to live of himſelf, or to chuſe another Maſter if he think good: And this Inſtance is much more ſtrong in an hired Servant, who is to ſerve his Maſter for ſuch and ſuch Wages, or to do ſuch and ſuch Work, and no other; if in this Caſe the Maſter refuſe to pay him his Wages, or put him to do other Work than what was agreed upon between them, or inſtead of an hired Servant will make him his abſolute Slave; in theſe Caſes no Man can doubt, but by this unjuſt Treatment of the Maſter, the Servant is diſcharged of his Service, and may go whither he pleaſes. And of theſe Actions, I have already proved at our firſt Meeting, the Party injured, be the Wife or Servant, muſt be the only Judges in the State of Nature, where there is no Civil Power over them; or elſe if the Huſband, or Maſter, ſhall judge for himſelf, the Wife or Servant is never like to get any Redreſs. Apply this to the Caſe of a limited or conditional King, and his Subjects, and ſee if it be not abſolutely the ſame, upon the total Breach of the Original Conſtitution of the Government; and whether the Bond of Allegiance is not then as abſolutely diſſolved, by the ſole Act of the Prince, without any authoritative Power in the Subjects, as it is in the Caſe of ſuch a Wife or Servant, by the ſole Act of the Huſband, or Maſter, without any Superior Authority, in ſuch Wife or Servant, to quit them, and ſo to diſcharge themſelves of their Wedlock, or Service.

Therefore as to your Accuſation, that my Notion is worſe than that of the Rump-Parliament, that put the King to Death; I deny it. For they ſuppoſed that there was no way of being rid of a Tyrannical King, but by making the People (and conſequently the Parliament as their Repreſentatives) his Superiors or Judges, to call him to an Account, and judge and puniſh him for his Tyranny. This I abhor as much as your ſelf; for I grant that a King cannot be properly the Supreme, and at the ſame Time own another Power above him, to puniſh or call him to an Account for his Miſcarriages: But this Power that I inſiſt on, is not (as I have all along told you) a Power of Puniſhment, but a Right of Reſiſtance for Self-Defence, in the firſt Place; and of judging and declaring the King to have forfeited his Crown, or Right to govern, if he perſiſt in his Tyranny, without any Amendment or Satisfaction given to the People.

Nor is this Doctrine of the People's thus judging for themſelves, ſo dangerous as that of our late Commonwealth's-Men, who put this Right of judging when the King had thus forfeited his Power, in the Parliament, of which they thought themſelves the only lawful or neceſſary Members; but indeed it was not ſo, for they ſtill ſuppoſed him to be their King, and yet at the ſame Time pretended to arraign him, as you may ſee by the Title of the Charge, or Indictment they drew up againſt him; all which I grant to be altogether unjuſt and illegal. But it is not more, but far leſs dangerous, to put this Power of judging when the King has thus diſſolved the Government, and forfeited his Crown, upon ſuch notorious and wilfull Breaches of the Fundamental Laws, in the whole or diffuſive Body of the People, rather than in the Parliament, or great Council of the Naion. For as to your Aſſertion, that the whole People are more fallible, and conſequently more dangerous Judges in ſuch a Caſe, than the great Council, I deny it; ſince all the Matters of Fact muſt be ſo evident and notorious to the Senſes and Feeling of the greater Part of the People, that there can be no

Doubt

Doubt or Denial of it, by any reaſonable and indifferent Judges. And the greateſt Part of the People are willing to live in Peace, without making any Diſturbance or Alteration in the Government, if it may be avoided. Whereas in any great Aſſembly or Council, there are many, and thoſe of the moſt eloquent and leading Men, who commonly carry the reſt which way the pleaſe, who are govern'd by Faction, Ambition, or Self-Intereſt; and upon all, or ſome of theſe, *&c.* may be deſirous to raiſe Civil Wars, or to declare the King to have done Things that require Reſiſtance, or to have forfeited his Crown, when indeed he has not. And for this the very long Parliament you mention is an evident Example, ſince you cannot but grant, that if the Differences between the King and that Parliament had been freely left to the Judgment of the whole People, there had never been a Civil War at all, nor had the King ever been beheaded; ſince it is notoriouſly known, that before the Parliament ſtirr'd up the People to War, by ſeizing of the Militia, they were not at all inclined to it; it being a reſtleſs, factious and ambitious Party of Men on both Sides, who brought on the late Civil War. Not but that I defer much to the Judgment of a free and unbyaſſed Parliament, who may confirm and declare what the diffuſive Body of the People have already juſtly done, to be right and lawful; which may be as great a Satisfaction to private Men's Conſciences in Civil Diſputes, as a general Council is in Spiritual Controverſies about Matters of Religion; wherein, tho' ſuch a Council cannot make new Articles of Faith, yet we Proteſtants hold that it may declare what were anciently believed. But if the People have a Right of judging during the Intervals of Parliament, when the King has notoriouſly broke the Fundamental Conſtitution, and ſo may make Reſiſtance accordingly, (as I have already proved they have) ſince otherwiſe the King may abſolutely refuſe ever to call any Parliament at all, or at leaſt may not let them ſit till all Grievances are redreſſed; ſo I cannot ſee why they may not alſo judge when the King has ſo wholly broke his Original Contract, and ſo obſtinately perſiſted in it, as to create a Forfeiture of his Crown; ſince the one is not harder to judge of than the other. Nor is your Parallel between our Opinion and that of the Jeſuits at all true; unleſs you could alſo prove, that I had put the ſame Authority in the People to depoſe their Kings by a Right conferred on them by God, as the Jeſuits do in the Pope by ſuch a pretended Power, as ſuperior to that of all the Monarchs in the World. But there is nothing like it in my Hypotheſis. Since I do neither allow the People to judge or depoſe the King, much leſs to put him to Death, tho' a Tyrant; but only to judge, and declare, when he has made ſuch notorious Breaches on the Fundamental Conſtitution, as do neceſſarily imply a Forfeiture, or rather an implicit Abdication of his Royal Power, and thereby depoſes himſelf.

But to come to the Second Point, to prove, that our Kings were never abſolute Monarchs, or had the ſole and abſolute Authority over the People of this Kingdom; and if ſo, that there was ſomewhat ſtill reſerved by the People at the firſt Inſtitution of the Government, and which the King by the Original Contract, when he or his Anceſtors took the Crown, muſt be ſtill ſuppoſed as bound to maintain. Now that there muſt have been ſuch a Thing as an Original Contract (however light you pleaſe to make of it) I thus make out. You may remember that at our Fifth Meeting, I proved, that at the firſt Inſtitution of Kingly Government in this Nation, it was not by Right of Inheritance, but Election. 2. That this Election was made either by the whole Body of the People in Perſon, or by their lawful Repreſentatives in the great Councils, or *Mycel* Synods of the *Engliſh Saxons.* 3. That this great Council did then reſerve to themſelves theſe material Parts of Government: Firſt, A Right of meeting or aſſembling at ſtated Times of the Year, and that without any previous Summons from the King. Secondly, A Right of propoſing, or at leaſt of aſſenting to all Laws that ſhould be made in all future Times. Thirdly, A Right of granting general Aids or Taxes for the People, and that without their Conſent no Taxes could be impoſed. Fourthly, and as ſubſequent to all theſe, a Right of agreeing to all Wars, and Treaties of Peace, to be made with Foreign Nations. But the firſt and laſt of theſe, tho' I could prove to have been conſtantly obſerved, during the *Saxon* Government, yet ſince the People have parted with their Right in theſe Matters, I ſhall not now inſiſt upon them, only that the People have ſtill a Right to Parliaments, once in Three Years at leaſt, and oftner if Neceſſity require.

Theſe then being the Original Conſtitutions of the Kingdom, the King muſt have either entred into a Compact with the People, for the maintenance and obſervation of theſe fundamental Rights, or elſe it muſt have been left to his Diſcretion, whether he would ſuffer the People to enjoy them or not. If the latter had been true, then I grant they had made him an Abſolute Monarch, and had left it wholly at his Diſcretion, whether they ſhould enjoy theſe fundamental Rights and Privileges or not. But it appears plainly to the contrary that they did not, for I can prove (if need be) that the Succeſſion to the Crown was at firſt Elective, and not Hereditary. Now in all Elective Kingdoms of the *Gothick* Model, it is very well known that their Kings were ſo far from being abſolute, that the Aſſembly of Eſtates, or great Councils of thoſe Kingdoms, reſerved to themſelves a Power of Depoſing their Kings for Tyranny and Miſ-government; as I have already proved was frequently done, not only in *England*, but in all the Neighbouring Kingdoms, without any Imputation of Rebellion. And I have alſo given you a Quotation out of the ancient *Mirror of Juſtices*, which tells us, that upon the Election of the firſt King of this whole Iſland, "The Princes that choſe him then cauſed him to
Mirrour. p. 8. "ſwear, that he would maintain the Holy Chriſtian Faith with all his Power,
"ſhould Rule his People juſtly without regard to any Perſon, and ſhould be obe-
"dient to ſuffer Right or Juſtice, as well as others, his Subjects. And if this
"were not an Original Contract, I know not elſe what to make of it.

And now that upon a Failure to perform theſe Things, a Forfeiture of the Crown would follow, and that thereupon he would ceaſe to be King; Pray ſee thoſe ancient Laws in *Lambard*'s *Saxon* Laws, and Sir *H. Spelman*'s Councils, which go under the Name of King *Edward* the Confeſſor's; (though they were made as *Hovenden* ſhews us, in the time of King *Edgar* his Grand father) where among thoſe Laws of King *Edward* that were confirmed by K. *William* I. this is one: *Rex autem qui eſt vicarius ſummi Regis ad hoc eſt conſtitutus, ut Regnum terrenum, & populum Domini, & ſuper omnia ſanctam veneretur Eccleſiam, & ab injuriis defendat, & maleficos ab ea evellat, & penitus diſperdat, quod niſi fecerit nec nomen Regis in eo conſtabit*; that is, not ſo much as the Title of King ſhall remain to him. And in the ſame Senſe *Bracton* is to be underſtood, in his Second Book; *Eſt enim Corona Regis facere Juſtitiam, & Judicium, & pacem tenere, ſine quibus conſiſtere non poteſt, nec teneri*; which may be thus render'd, That it is of the Royal Office or Dignity, (for ſo I conſtrue *Corona Regis*) to do Juſtice and Judgment, and to maintain Peace; without the Obſervation of which, his Crown or Royal Dignity cannot hold nor conſiſt. So that this is but an Explanation of my Senſe of that other Paſſage I have already cited out of this Author, *Non eſt Rex ubi dominatur voluntas, & non Lex, i. e.* He is not a King, (that is, ceaſes to be a King) when his Will, and not the Law Governs; and he gives the Reaſon for it in another Place, ſpeaking of the King, who was not then Hereditary, for, *ad hoc electus eſt Rex, & conſtitutus, ut faciat Juſtitiam univerſis.*

Spel. Concil. Leges Guil. cap. 6. Hovenden's Annals *Part* 2. p. 608.

Cap. 24.

Therefore if he thus totally deviate from the End of his Creation, his Authority ceaſes, and is at an End. So that nothing is plainer, than that our Ancient Laws have declared the King to have loſt the Title and Right of being King, in caſe of notorious Tyranny, and Breach of this Original Contract; and that the ancient Lawyers *Bracton* and *Fleta*, gave the ſame Interpretation of this Law, is alſo as plain.

So that what you have ſaid to evade or miſinterpret the Authority of theſe Authors, as to the Points of Non-Reſiſtance and Forfeiture of the Regal Power, will ſignify nothing; for as to what you ſay of that Clauſe of Reſiſtance being left out in all ſubſequent Charters after this of K. *John*'s, and therefore that it was no binding Law to his Succeſſors, I do not deny the Matter of Fact, that it was ſo omitted; yet that does not prove, that the whole Nation ever renounced their Right of Reſiſtance in the Caſes mentioned; ſince as they exerciſed it before that Charter was given, ſo alſo they continued to do it in the Reigns of his Succeſſors; as I have ſhown in the Hiſtory I have given you of this Reſiſtance at our laſt Meeting. And therefore conſtant Practice is the beſt Interpreter of this Fundamental Law. As for my Evaſion of that Place of *Bracton*, *Non eſt Rex*, &c. I have ſufficiently confirmed my Senſe of it, by this Law of K. *Edward*, as alſo by other Paſſages out of this Author; and I will leave it to any Man to judge which is the moſt genuine Interpretation of this Place, He is not a King, (that is, ceaſes to be ſo) when his Will, and not the Law Rules; or, *That he does not act as a King*,

as

as you interpret it. But you grant ſuch a King is really a Tyrant, yet may not be reſiſted, nor can loſe his Power. And why? Becauſe it is abſolute and unconditional. This is to take that for granted which we deny; for he that hath not the full and ſole Power of making Laws, and impoſing Taxes, is not abſolute Monarch; but the King of *England* has neither of theſe; *Ergo*, *&c.* And if this be ſo, ſee what *Grotius* ſays expreſly of ſuch a Prince (as high as he is for the Non-reſiſtance of Abſolute Monarchs,) *Si Rex partem habeat ſummi Imperii, partem alteram populus, aut ſenatus, Regi in partem non ſuam involunti vis juſta opponi poterit, quia catenus Imperium non habet; quod locum habere cenſeo, etiamſi dictum ſit, belli poteſtatem penes Regem fore; id enim de Bello externo intelligendum eſt, eam alioqui quiſquis imperii ſummi partem habeat, non poſſet non jus habere eam partem tuendi, quod ubi ſit, poteſt Rex etiam ſuam partem belli jure amittere:* Where you ſee, that the Opinion of this learned Author is, That a limited King may not only be reſiſted in Caſe he invade that Part of the Supreme Power that does not belong to him, but may alſo loſe his own Share of the Empire by Right of War. Now further, that our ancient Lawyers believed, that our King had not the whole Power, or παντοκρατεια in their Hands, appears by that Paſſage ſo often cited out of *Bracton*, *Rex habet ſuperiores, Legem per quam factus eſt Rex, & curiam Baronum, &c.* which you ſtrive to evade, by ſuppoſing I know not what Moral Superiority, which the Court might only exerciſe towards the King by Remonſtrance, or Petition, in ſetting forth his Deviations againſt a Law. But what if he had refuſed to hearken to them? Why then, ſay you, all the Remedy was *expectet Deum Ultorem*? Now if this was all, then every private Subject had ſuch a Moral Superiority; for *Bracton* ſays of them, *locus erit ſupplicationi, ut factum corrigat, & emendet, quod ſi non fecerit, &c.* then he was to look for God to revenge it. But *Bracton* and *Fleta* are more expreſs in this Point, and ſay, that this *Curia Baronum* were not only *Socii* but *Magiſtri*; for ſay they, *qui habet Socium, habet Magiſtrum*: So that ſurely this Bridle muſt have been ſomewhat more than bare Prayers, Remonſtrances, or denial of Money; nor is your Reaſon to the contrary cogent, ſince it is only drawn from a Simile between Chriſt, the bleſſed Virgin, and the Law of *Moſes*. Now you know very well that Similes are not Arguments, nor can any Argument be drawn from them. But indeed it plainly appears by what follows in *Bracton*, that he ſuppoſed this Power to be ſomewhat more than meerly Moral; for he there ſays, that if the People cry to God for want of Juſtice againſt the King, he will ſend for a Foreign Nation, who ſhall come and deſtroy both them (*viz.* the Barons) and their King; which would have been a vain Threat, if He might have choſen whether he would be reformed by them or not.

Lib. 1. *Cap.* 4. *Sect.* 13.

And that King *James* the Firſt, himſelf was ſatisfied of this Original Contract, may appear by his own Words, in a Speech to both Houſes of Parliament, 1609; where he expreſly tells them, that the King binds himſelf by a double Oath to the Obſervation of the fundamental Laws of his Kingdom; *Tacitly*, as being a King, and ſo bound to Protect, as well the People as the Laws of his Kingdom; and *Expreſly* by his Oath at his Coronation; ſo as every King in a ſettled Kingdom, is bound to obſerve that Paction made to his People by his Laws, in framing the Government as agreeable thereunto, according to that Paction which God made with *Noah* after the Deluge, *&c.*

To conclude; if the firſt King of the *Saxon* Race took the Crown upon Condition to maintain the Fundamental Laws and Conſtitution of the Government, and that he was never inveſted with an abſolute Deſpotick Power of making Laws, and raiſing Money at his Pleaſure; but the People reſerved to themſelves their Share of both, at the firſt Inſtitution of the Monarchy; all thoſe Princes that claim by Virtue of their Right, are tied by this firſt Original Contract, whether they ever took any Coronation Oath, or not. Nor though the Crown is now become no more Elective, does it at all alter the Condition or the Limitation of his Anceſtors, as long as the preſent King holds by, and under the ſame Title, and by vertue of the ſame Original Contract; ſince, as it was by the Peoples Will that it was at firſt Elective, ſo it was alſo by their Will, that it became ſucceſſive; ſince every Entail of the Crown upon Heirs, can only proceed from the People's Agreement or Conſent to maintain it as a ſtanding Law; or elſe every King might alter it at his Pleaſure.

As for your next Reply, That if we reſiſt the King, becauſe when he turns Tyrant he acts not as God's Lieutenant, but the Devil's Miniſter; for that tho' it is lawful to reſiſt the Devil, yet we cannot uſe carnal Force againſt him: This Aſſumption is precarious; ſince if we can ſuppoſe the Devil does ever uſe carnal Force, we may alſo repel the ſame by Force; or elſe thoſe famous Stories of Witches and Spirits being afraid of, and flying from naked Swords, are all falſe. I beg your Pardon for ſpeaking ſo long, which I could not well contract into leſs Compaſs, without paſſing by your Arguments and Anſwers to my Quotations.

M. You have indeed outdone me in making long Speeches; but I have heard you patiently, becauſe I cannot deny but that you have argu'd fairly, had it been upon a right Foundation; but ſince it is not, pray give me Leave to ſet you right, and ſhew you, that notwithſtanding all you have urged to the contrary, yet all our Kings ſince the Conqueſt were abſolute Monarchs; and if ſo, not only irreſiſtible upon any Breach of their Coronation-Oaths, but alſo have been inveſted with ſuch an abſolute, uncondition'd Power, as can never be loſt or forfeited upon account of the higheſt Acts of Tyranny. But before I come to my Proofs, give me Leave to ſay ſomewhat to thoſe laſt Citations you have brought from King *Edward*'s Laws, as alſo from *Bracton* and *Fleta*. Firſt, As to that Law you have cited, that paſſes under the Title of one of thoſe confirmed by King *William* the Conqueror; give me Leave to tell you, that I much queſtion whether it be genuine, and not foiſted in by ſome of the Monks that had the keeping of the Copies of thoſe Laws in their Monaſteries, after the Original it ſelf was no more to be found. For in the firſt place, I muſt obſerve, it does not ſavour of that abſolute Power that I take King *William* to have acquired by his Sword, to own his Royal Dignity forfeitable; or that he could loſe the Name of King upon any Account whatſoever; as this pretended Law ſeems to intimate, by theſe Words, *nec nomen Regis in eo conſtabit.* Now that it ſtrongly ſavours of the Ignorance of the Monks, I ſhall ſhew you by the very Law it ſelf, wherein the chief Points for which the King muſt loſe his Royal Title, is not only if he does not defend his Earthly Kingdom, but alſo the People of God, that is, the Clergy; and alſo ſhall fail to reverence Holy Church, that is, the Biſhops and Clergy; of whom the Monks looked upon themſelves as the chief, and moſt conſiderable Part; as alſo, if he fail to deſtroy Evil-doers, (that is, Hereticks out of the Church), then, forſooth, not ſo much as the Name of King muſt remain to him. Now, pray ſee the Conſequence of this, and whether you will own this to be a Fundamental Law of the Kingdom; for then at this rate, *Henry* VIII. who ſuppreſſed Monaſteries, and took away Abby-Lands, and let injurious Perſons ſpoil the Church by Sacrilege; and alſo all other Princes who have not extirpated thoſe, who, when this Law was ſuppoſed to have been made, would have paſſed for Hereticks, (that is, all Proteſtants,) muſt have all forfeited their Royal Dignities: And conſequently the Pope did *Henry* VIII. and Queen *Elizabeth* no Wrong, if in Purſuance of this Law, he excommunicated them, and declared they had forfeited their Crown; ſince this Law ſays, that Pope *John* teſtify'd this Truth, *quod nomen Regis perdet.* But nothing makes out more evidently to me the Forgery of this pretended Law, than the notorious Faults there are in the Chronology, where the Sentence of Pope *John* againſt King *Childerick*, is mention'd as an Evidence to make it good; whereas indeed, it was not Pope *John*, but *Zachary*, who gave this Sentence. But in *Hovenden*'s Copy of this Law, there is yet a more groſs Error; for it makes *Pepin*, and his Son *Charles*, to have writ to King *William* the Baſtard, upon their hearing this definitive Sentence ſo wiſely given concerning the Title of a King; all which is ſo notorious a Piece of Folly and Ignorance, that it needs no other Confutation. But granting that Part containing the Law it ſelf, to be genuine, it does not at all ſet forth your Original Contract, or make it a Forfeiture in the King to do any of thoſe things which you ſuppoſed to be main Parts of the Fundamental Conſtitution; only ſays in general, 'That unleſs he defend 'his Earthly Kingdom, and the People of God, and reverence Holy Church, by 'defending it from injurious Perſons, and removing Evil-doers from it, the Name of 'the King will not belong to him.' Now all this the moſt abſolute Monarch in *Chriſtendom*, even the King of *France* himſelf, will ſay he performs to a Tittle. And therefore there is no fear of a Forfeiture for any King, tho' never ſo Abſolute and Tyrannical, upon theſe Terms, unleſs he will do that which I think he is too wiſe ever to go about, to deſtroy his People wilfully, or to fall upon the Church and Clergy.

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In Anſwer to your firſt Authority out of the *Mirror*, I think it of no Authority, ſince that Author writ in the Time of *Edward* I. and II. long after the *Saxon* Times; and beſides, his Relation of Forty Princes chuſing a King, ſounds like a Fable, there being no ſuch thing mention'd in the *Saxon* Chronicle, or any other ancient Hiſtorian. And as for the reſt of the Places you have cited out of *Bracton* and *Fleta*, to prove this Notion of a Forfeiture, I muſt freely tell you, that they do not ſeem to me to come up to the Point for which you bring them; for as to that Place you have cited out of *Bracton, Non eſt Rex, &c.* you and I differ about the Senſe of it; and I ſee no Reaſon why I may not ſtill keep my own Opinion. The other Place I confeſs ſeems more expreſs, *viz.* 'That it is the Crown or Dig-'nity of the King to do Juſtice or Judgment, without which it cannot hold or 'conſiſt;' This alſo does refer only to ſuch Juſtice and Judgment as the King is to give and diſtribute between Man and Man, without any Relation to his own Actions towards his Subjects. And if a Prince will not do this, either by himſelf or Deputies, I grant, his Crown or Royal Dignity cannot long ſubſiſt to be maintain'd; ſince this will bring all things to utter Confuſion, ſo that Strangers will ſoon be encourag'd to invade the Kingdom; nor will the People be at all concern'd to aſſiſt ſuch a King againſt them, ſince they can be in no worſe a Condition under a Stranger than under him. But as for the ancient Superiority of the Law and Court of Barons, there mention'd, to be over the King, that ſtill ſeems to me to be only a Moral, and not a Coercive Power; ſince the Law alone is but a dead Letter, and can force no Man of it ſelf, without the Power of Men to ſupport it; and there can be no Interpreters of this Law but the King, and his Judges out of Parliament; and the Parliament ſitting, that alone, that is, not the Houſe of Peers or Commons alone, or both together; but the King, Lords, and Commons, jointly, that can interpret Laws. But let the Power of this Court of Barons have been anciently what it will, it ſeems to relate only to the Peers and Tenants in *Capite*, and not to the Commons at all, ſince none ever heard them called the King's Companions: And as for any Coercive Power in the Two Houſes over the King, I have already ſhewed you, that the two firſt Parliaments of King *Charles* II. have expreſly renounced it for themſelves and the whole Nation; and therefore I muſt ſtill ſtick to my firſt Concluſion, That the King is not to be reſiſted upon any Terms whatſoever, neither can forfeit his Royal Dignity by certain general, antiquated Laws; or by the forced Interpretations of ſome doubtful, obſcure Paſſages in our ancient Lawyers. But I ſhall now proceed to prove, --------

F. I pray give me Leave to reply to what you have now ſaid, before you go to any new Head. Firſt, In anſwer to what you have now objected againſt the Authority of that Ancient Law-Book, the *Mirror*, I think you have no Reaſon to object againſt it, ſince the Author is ſuppoſed by our Antiquaries, to have peruſed many ancient *Saxon* Laws, that are now loſt; as you may ſee in thoſe that relate to King *Alfred*'s Proceedings againſt his corrupt Judges, and other things. Then as to what you object againſt the Genuineneſs of this Law of *Edward* the Confeſſor's, it is certain, that it is found in theſe very Words, with very little Alteration, in all the Copies of K. *Edward*'s Laws; only in *Hovenden*, inſtead of *Rex quia Vicarius ſummi Regis*, it is, *Rex atque Vicarius ejus*; which is no great Difference, and may relate to the King's Lieutenant, in his Abſence beyond the Sea, for which there was often occaſion for our Kings, when Dukes of *Normandy*, after their Acceſſion to the Crown. And therefore tho' I grant ſome Clergymen (they having then all the Learning of the Nation among them) might draw up this Law into the Form it was made, and ſo render it as advantageous for the Church as they could; yet that this Clauſe was not the Addition of any ignorant Monk (as you ſuppoſe) will appear from this, That it is recorded by *Hovenden*, who lived and wrote about a hundred Years after it was thus confirmed: And we cannot ſuppoſe all the Copies of theſe Laws to be loſt, and one ſingle Copy to be left, and corrupted in ſo ſhort a Time. And tho' it is true, this Law is not found among thoſe ſet forth in the laſt Edition of *Ingulph*, yet does it not therefore follow, that there was no ſuch Law ever made or confirmed by King *William*; ſince thoſe Laws in *Ingulph* ſeem to be more like an Epitome of the criminal and feudal Laws, confirmed or added by that King, than an exact Body of all the Laws of the Confeſſor; thoſe having been writ in *Latin*, and confirmed by King *William* in the Fourth Year of his Reign; whereas this Copy was publiſhed in *French*, for the Uſe of the King's *Norman* and *French* Subjects, and that long after King *William*'s coming to the Crown; for *Ingulph* tells

tells us, 'That after *Domesday*-Book was made, he brought those Laws down 'from *London* in the *French* Tongue, (in which they were put forth, lest he, or 'any of his Monks, should thro' Ignorance, happen to offend his Royal Majesty, 'by an unwary Breach of them).' But as for the Faults in the Chronology in the Story of *Charles* and *Pepin*, in all the best Copies of these Laws, this Letter is said to be written by them to the Pope, and not to King *William* at all; and then it will be at most but a *Mis-nomer*, or Error of the Transcriber, putting in Pope *John* for *Zachary*. But if you will have my Opinion of this Matter, I do freely grant, that this Passage in the Law concerning these Princes writing to the Pope about the Deposition of King *Childerick*, might be an Addition of those Monks who first transcribed those Laws, and made short Glosses upon them; and yet the Law it self might be genuine notwithstanding; and if the Law it self be so, it must be understood in a larger Sense than what you would put upon it: For sure by defending of his Kingdom, must be meant, not only the bare defending it against Foreign Enemies, but also against the Wrongs and Oppressions of his own Ministers and Officers; which if he suffer by a wilful Negligence, or on set Purposes, he will as much offend against this Law, as if he had done it himself, and so will lie under the same Penalty. Much less will these Passages concerning defending the Clergy, and reverencing the Church, render this Law either void, or impracticable; for suppose you take *Populus Dei*, in the strictest Sense, to signify the same with *Servus Dei*, (which I grant always to signify the Clergy in our ancient *Saxon* Laws and Charters) yet all this does not make this Law void and impracticable; since sure, maintaining the Worship of God is one Part of the Duty of a Christian King; nor can this be well perform'd without some Men set apart for that Purpose, and that these Men cannot attend their Sacred Function, without being maintained in their just Rights and Liberties; neither is it any Consequence, that these Clergy must always consist of the very same Orders of Men, as when this Law was made. So that suppose the Monks were then held as a necessary Part of this Clergy, Will it follow, that it was not lawful for the State to alter or take them away? For then no Religious Order that was then in being, could have been suppressed afterwards; which no Papist will say. So that the Meaning of this Clause in the Oath is no more, than that the King should from time to time defend all such Clergymen, such as the Nation, (that is, the Legislative Power) should think useful and necessary for God's Service, without being tied to any certain Orders or Degrees of Men, provided those that are particularly ordain'd by Christ and his Apostles, for the Service of his Church, be inviolably maintained and preserved. So likewise for the Church it self, granting, (which may also be question'd) that at the Time when this Law was made or confirmed, Popery was come to its Height, and so was the establish'd Religion of the Nation; and consequently that by the Church here mention'd, was then to be understood the *Romish* Church or Religion, (as we now call it); yet does it not follow, that the King by this Law is to forfeit his Crown, if he ever alter it; for the Law only says in general, that he shall reverence the Church of God, that is, That Profession of Christianity, or Way, which he and the great Council of the Nation shall, upon the most mature Judgment and Deliberation, think to be so. So that all that can be deduced from this Clause, is, That the King shall reverence Holy Church, that is, maintain the Profession of Religion, which shall be established by Law, and shall make no Alteration therein, without the general Consent of the whole Nation in their great Councils or Synods, consisting as well of Ecclesiastical as Secular Members: And so likewise he shall defend it from all injurious Persons, that would invade the Rights of the Church and Clergy contrary to Law, and shall root out all Evil-doers, that is, all debauch'd and wicked Professors of Christianity; for so *Maleficos* properly signifies, and not Hereticks, as you would render it, (who are not Evil-doers, but false Believers); or if it should be interpreted for Hereticks, it is not those that then might be looked upon as such, but what the present Church shall so determine; or else we must own the former Church to have been infallible in all her Determinations. So that I can see no Reason upon the whole Matter, why this Law should now become void or unprofitable by reason of any Alterations in Religion, or of those Men that were then to exercise the Functions of it, as long as all the necessary and material Parts of both are preserv'd, as they are to this Day; for otherwise this Law would have tied up the King and Nation from making any Reformation in Religion, tho' never so much for the better; or tho' the National Church had never so much required

quired it, which I ſuppoſe no true Proteſtant will affirm. As for the Authority of that Ancient Law-Book, call'd *The Mirror of Juſtices*, I think I may very well inſiſt upon it, notwithſtanding any thing you have urg'd to the contrary.

But as for thoſe Paſſages out of *Bracton* and *Fleta*, which I have brought to confirm and ſupport our Senſe of this Law, and which you labour to avoid, by putting too general and looſe an Interpretation upon them; whereby you would make them only to ſignify, that the King is to maintain right Judgment and Juſtice between Man and Man, without which his Royal Dignity cannot hold or ſubſiſt: But that he is not obliged upon any Penalty to obſerve the ſame Things in reſpect of himſelf, or his own Officers or Miniſters; this is all one, as if a Shepherd, who had a Flock of Sheep committed to his Charge by the Owner, having firſt fleeced, and then killed and deſtroyed them, and converted the Wool and Carcaſſes to his own private Uſe, ſhould then tell the Owner, that he was indeed to defend the Flock from Thieves, Wolves and Foxes, but that it was no part of his Bargain to keep them ſafe untouch'd from himſelf, or his Servants, or ſo much as his own Dogs. But that the Senſe of *Bracton* and *Fleta* is quite otherwiſe, ſufficiently appears by theſe Places I have now cited; and if thoſe will not do, pray conſider theſe that I ſhall here add. For *Bracton* alſo, in the ſame Chapter, tells us, *Ad hoc creatus eſt* [*Rex*] *& electus, ut Juſtitiam faciat univerſis.* And he alſo there recites the ancient Coronation Oath in theſe Words: *Debet enim* [*Rex*] *in Coronatione ſua nomine Jeſu Chriſti hæc tria promittere Populo ſibi ſubdito, Imprimis, ſe eſſe præcepturum, & pro viribus opem impenſurum ut omni Populo Chriſtiano vera pax omni ſuo tempore obſervetur. 2. Ut rapacitates & omnes iniquitates interdicat. 3. Ut in omnibus Judiciis æquitatem præcipiat, & miſericordiam, ut indulgeat ei ſuam miſericordiam clemens Deus.* Now, how can a King obſerve this Oath, that robs the People of their Goods, and raiſes Taxes contrary to Law? Or how can he continue a King, who violates all the Ends of his Inſtitution? From all which it appears, that by this *Juſtice* and *Judgment* muſt be meant, not only the King's own obſerving Juſtice towards his People, but alſo his prohibiting his inferior Miniſters and Officers from ſpoiling and oppreſſing them. And that no Prerogative can juſtify him in the doing otherwiſe, is as evident from another Place in *Bracton*, where he tells us, That *Regia poteſtas Juris eſt, non Injuriæ, & nihil aliud poteſt Rex niſi quod jure poteſt.* But *Fleta* is ſomewhat larger on this Head, tho' to the ſame Effect, when ſpeaking of the King's Power or Prerogative, he ſays thus; *Et licet omnes potentiâ præcellat, cor tamen ipſius in manu Dei eſſe debet, & ne potentia ſua maneat infrænata frænum imponat temperantiæ, & lora moderantiæ; ne trahetur ad injuriam, quia nihil aliud, hoc eſt in terra, niſi quod de Jure poteſt: nec obſtat quod dicitur, quod Principi placet legis habet poteſtatem, quia ſequitur cum lege Regia, quæ de ejus Imperio lata eſt, non quicquid de voluntate Regis tantopere præſumptum eſt, ſed quod Magnatum ſuorum conſilio Rege authoritatem præſtante, & habita ſuper hoc deliberatione, & tractatu recte fuerit definitum.* Which not only ſhews, that our Ancient *Engliſh* Lawyers in this agreed with the Civil Law, and gave the ſame Account of the Original of the Royal Power as that Law does, *viz.* that it was conferred by the People of *Rome*, on the *Roman* Emperor, by the *Rex Regia*, mentioned in the old Civilians I have formerly cited; and alſo ſhews, that our Ancient Lawyers ſuppoſed that by a like Law among us, the Royal Authority was originally derived from the Conſent of the People of *England*; without whoſe Advice and Aſſent, included in that of their Repreſentatives, here called *Conſilium Magnatum* (*Conſilium* being taken for Conſent in this place, as I have prov'd it often ſignify'd) no Law can ever be made. Now, if the King will not be ruled by this Bridle of Moderation, this Author, as well as *Bracton*, tells us, That the King then hath his Superiors, the Law and his Court of Barons, who were as Maſters to put this Bridle upon him. But admit, he will run away with this Bridle between his Teeth; all this had ſignified nothing, if there be no other Remedy left us, beſides bare Supplication or Remonſtrances to the King of his Duty; and he might have diſſolved the Parliament before ever it could have any Time to do either the one or the other.

Lib. 3. *c.* 9.

Lib. 1. *c.* 17.

To conclude; That the King was at firſt elected and created for this End, that he may do Juſtice to all Men; and that this Juſtice does not only concern his maintaining Juſtice between his Subjects one towards another, but alſo in reſpect of himſelf, his Children and Subordinate Officers and Miniſters that act by his Commiſſion, appears by what follows in *Bracton*, after the King's Coronation-Oath:

Poteſtas (ſcil. Regis) itaq; Juris eſt non injuriæ, & cum ipſe ſit Author Juris, non debet inde injuriarum naſci occaſio, & etiam qui ex officio ſuo alios prohibere neceſſe habet, id ipſum in propria perſona committere non debet. So that it is plain, that if he either command or permit theſe wilful Injuries generally all over his Kingdom, he fails to defend it according to King *Edward*'s Laws; and if he thus fail to defend it, he thereupon loſes or forfeits his very Title or Office of a King, ſince he cannot keep or hold his Crown, or Royal Dignity; for without Juſtice it cannot ſubſiſt, and this by the Original Contract. Since upon whatever Terms the firſt King of this Race took the Crown, upon the ſame Terms all his Poſterity who ſucceed either by Election or Right of Blood, by virtue of that firſt Compact, are to hold it under the like Penalty of a Forfeiture, in Caſe of a wilful Neglect or Violation of their Duty.

M. I confeſs you have made a ſpecious Proof of this Original Contract you ſo much talk of, and more than ever I thought could have been ſaid for it: But let it be what it will, it is certain, in the firſt place, that whatever coercive Power the Two Houſes of Parliament might pretend to when *Bracton* wrote, they have ſolemnly renounced it in Two ſucceſſive Parliaments in the Reign of King *Charles* the IId; therefore I ſhall not inſiſt any longer upon Old Antiquated Laws, or Original Contracts, which are not directly expreſſed, but conſequently deduced at beſt. But I muſt now tell you, that let the firſt Inſtitution of this Government have been what it will in the *Saxon* Times, and what Original Contract ſoever you may pleaſe to fancy between them and their Subjects; yet this was all gone, and out of doors, by that abſolute Conqueſt which King *William* the Iſt made of this Kingdom for himſelf and his Heirs, who do not at all claim under the Title of the *Saxon* Kings. For ſince this Anceſtor of our new Kings had no juſt Title to the Crown but by the Sword, and that he gain'd this Kingdom by the Conqueſt of King *Harold*, and the People of *England*, who had elected, and fought for him; as alſo by the ſubſequent Recognition of this Right by all the People of *England*, in their Oaths of Allegiance ſo often repeated to King *William* and his Succeſſors, they have thereby acknowledged it to be as abſolute a Monarchy by Conqueſt, as ever was inſtituted by any Prince in the World. And tho' I grant, that ſeveral of the Conquerors have been graciouſly pleaſed to grant divers Privileges to the People of this Nation, and ſome of them perhaps the ſame they enjoyed in the *Saxon* Time; yet can they not enjoy it by vertue of that Original Contract you ſuppoſe to have been made between the firſt King of that *Saxon* Race, and the People of *England*: For, as I ſaid but now, King *William* had no Right by any Title from King *Edward* the Confeſſor, but wholly by his Sword, as I ſhall prove by and by.

But however, theſe Conceſſions ought not at all to derogate from the Abſoluteneſs of the Power, or the *Indefeaſibleneſs* of our King's Title: For ſince theſe Limitations of Abſolute or Imperial Power did not proceed from any other Original, than the free and voluntary Conceſſions of our Kings, and not from any Compact with their People; they do not at all derogate from the uncontrollable and unaccountable Sovereignty thereof: So that we may very well diſtinguiſh between the Being and Eſſence of Imperial or Sovereign Power, and the Exerciſe or Emanation thereof. As to the Being and Eſſence of it, it is in as full Perfection in the Limited, as in the Arbitrary Sovereign, tho' the Law confines and limits him in the Exerciſe thereof; but to be confined in the Exerciſe doth not deſtroy the Being, nor diminiſh the Perfection of Sovereign Power: for then the Power of God himſelf could not be Sovereign, becauſe there are certain immutable Rules of Truth and Juſtice, within which it is neceſſarily limited and confined; but God is nevertheleſs a perfect Imperial Sovereign over the Univerſe, tho' the Exerciſe of his Government over his Creatures be limited by the Eternal Laws of Truth and Equity. It is true, that this Limitation of Almighty God is intrinſical, and proceeds from the Perfection of his Righteous and Holy Nature; but yet it ſhews, that the moſt perfect and abſolute Imperial Power may, without a Contradiction, be confined within Bounds, and limited in the actual Exerciſe thereof; and that ſuch Limitation of Abſolute Imperial Power (proceeding wholly from it ſelf) doth only qualify and temper, but not deſtroy the Eſſence of it. And therefore *Coke*, in *Cawdry*'s Caſe, ſaith, That by the Ancient Laws of this Realm, *England* is an Abſolute Empire and Monarchy, and that the King is furniſh'd with plenary and entire Power, Prerogative and Juriſdiction, and is Supreme Governor over all Perſons within this Realm.

H. I. p. 211.

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Therefore whoever will conſider the Original of this Limitation of Sovereign Power, to have proceeded wholly *ab intrinſico*, from the voluntary Grants of our firſt Monarchs after the Conqueſt; and will alſo diſtinguiſh the Eſſence from the Exerciſe of Sovereign Power, will find there is no Contradiction between the Fulneſs of Sovereign Power in the Root, or Eſſence of it, and a Legal Limitation of the Uſe and Exerciſe thereof; and from hence it comes to paſs, that the King of *England*, tho' he be thus limited in the Uſe and Exerciſe of his Power, yet he is ſtill as much the Fountain of all Power and Juriſdiction within his Dominions, as if he were Arbitrary; he hath none to ſhare with him in the Sovereignty, but all Power and Authority is derived from him, like Light from the Sun: In him alone it is radically and originally placed; he hath no Sharers or Copartners with him in the Sovereignty, none co-ordinate with him in the Government, none Equal, no Superior, but only God to whom alone he is ſubject. Hence ſaith *Bracton*, *Omnis quidem ſub eo, & ipſe ſub nullo, ſed tantum ſub Deo, non eſt inferior ſibi ſubjectis, non Parem habet in regno ſuo*; and afterwards, *Ipſe autem Rex non debet eſſe ſub homine, ſed ſub Deo.* *Ibid.* *Lib.* 1. *c.* 8.

Therefore tho' I grant the King is obliged by his Coronation Oath, to keep to theſe Limitations, which both he and his Predeceſſors have ſworn to; yet if he any ways fail in the Performance of it, this Failure cannot give his People any Manner of Right to take up Arms againſt him, and to reſiſt him in any ſuch Caſe, much leſs can it cauſe a Forfeiture of his Royal Power; ſince being at firſt the ſole Sovereign Power, he did not by putting this Limitation thereunto, intend to part with any Share of it to the great Council of the Kingdom, or Parliament, but only to take them into a Part of the Care and Trouble of the Government, and to limit his Prerogative from paſſing any Laws or raiſing any Money without their Aſſent, unleſs in Caſes of great Neceſſity; and then, if he is ſtill Judge of this Neceſſity, as certainly he is in the Intervals of Parliament, it can never be ſuppoſed, that the firſt Prince, or his Succeſſors, that parted with theſe Privileges to the People, ever intended to be ſo ſtraitly tied to them, as that in no Caſe whatever, tho' never ſo preſſing, they ſhould not depart from them, much leſs that he ſhould forfeit his Crown if he ſhould wholly break them, nay ſhould perſiſt ſo to do, and reſolve to turn this Limited into an Abſolute Deſpotick Monarchy; ſince the Obſervation of theſe Laws being but Conceſſions of his own, or his Predeceſſors, can never be looked upon as Conditions of his holding the Crown, nor of the Subjects Allegiance to it; there being, as you your ſelf confeſs, no ſuch Clauſe expreſs'd in either Part, neither in the King's Coronation Oath, nor yet in theirs of Allegiance to him, as you your ſelf cannot but acknowledge; and tho' it is true, the King ſwears at his Coronation to keep and maintain the Laws, yet *Grotius* tells us, *Lib.* 1. *cap.* 3. *That an Empire or Kingdom does not ceaſe to be abſolute, altho' he who is to rule promiſe ſome Things to God, or to his Subjects, even ſuch which may appertain to the Manner of the Empire; and that not only concerning the Obſervation of the Natural or Divine Law, but of certain Rules to which without a Promiſe he were not obliged.* So that in all Promiſes of this kind, the Manner of the Obligation is not reciprocal, or of the ſame Sort on both Sides. As for Example, it is only moral in reſpect of the King, and it is left wholly to God to judge between the King and his Subjects, and to puniſh him when he breaks his Part: But to the King as God's Lieutenant on Earth, it belongs not only to judge of his Subjects Breach of their Oath and Contract, but alſo to puniſh them for ſo doing, and compel them to the Performance of it. And of this Judgment are all the modern Civilians. As for *Bodin* I have given you his Opinion in the Chapter I laſt cited, concerning this Matter, and he as well as *Grotius* is clearly of Opinion, that abſolute Monarchs, ſuch as he reckons the King of *England* to be, are not to be called in Queſtion or deſtroyed, let their Breach of Laws and Tyranny be never ſo notorious, much leſs can they forfeit their Royal Dignity for ſuch Male-adminiſtration. And tho' *Grotius* is of Opinion, that in Caſes of great and evident Dangers of Life, Subjects may have a Right of Reſiſtance againſt abſolute Princes, and thoſe commiſſioned by them; What is this to the Caſe in Hand? *viz.* a Reſiſtance againſt an abſolute Monarch for Violation of thoſe Privileges and Liberties that were granted by himſelf or his Anceſtors, and without which Subjects may very well live and ſubſiſt; as we ſee they do, under

the moſt abſolute deſpotick Monarchies, where they enjoy no ſuch Thing; tho' perhaps they do not live ſo well and freely as we do. Nay, *Puffendorf*, the Author you ſo much make uſe of, in his Seventh Book, will not allow "Subjects to take up "Arms, or reſiſt abſolute Princes, for too great Cruelty in Puniſhment, nor for "impoſing too immoderate Taxes; ſince the Preſumption of Juſtice, and Neceſſity "for the doing of theſe Things is always on the Prince's Side; nay, if his Pro- "miſes are not kept, or Privileges formerly granted are taken away, if the "Prince be abſolute, and will pretend any Fault, Neceſſity, or remarkable Be- "nefit thereby to the Commonwealth, he ſhall be deemed to have acted by a "Right, of which the Faculty of judging is wholly wanting to the Subjects; "ſince all Privileges have this Exception, unleſs the Welfare, or Neceſſity of the "Commonweal forbid them to be obſerved.

L. VII. *Cap.* 8. § 6.

F. Since your laſt Diſcourſe conſiſts of Two Parts; Matter of Fact, and Matter of Right deducible from that Fact, I ſhall ſpeak to each of them in Order. Firſt as to the Matter of Fact, it is a great Miſtake in you, and Dr *Brady*, to maintain that King *William* I. was really a Conqueror, and by his Sword (without any other Title) obtained ſuch an entire Victory over K. *Harold* and the whole *Engliſh* Nation, as gave him an Hereditary Right for himſelf and his Heirs, to the abſolute Allegiance of the whole *Engliſh* Nation, without any Reſerve or Condition whatever: So that all our ancient Liberties and Privileges being thereby loſt and forfeited, this Nation can claim nothing of that kind, but from the Grants and Conceſſions of that King or his Succeſſors; every one of which Propoſitions contain many notorious Miſtakes in Matter of Fact: For in the firſt place, K. *William* never claimed the Crown by Conqueſt, but by the Adoption and Teſtament of K. *Edw.* the Confeſſor; and I defy you to ſhew me any ancient Law or Charter, either of his own, or any of his immediate Deſcendants, wherein he is ſtiled Conqueror: 'Tis true, in his Charter to the Abbey of *Weſtminſter*, he ſays, that by the Edge of the Sword he obtain'd the Kingdom by the Conqueſt of *Harold* and his Accomplices, yet does not found his Right on that Victory alone, but on the Donation of King *Edward* his Couſin; the Words are remarkable, *in ore gladii adeptus ſum Regnum Anglorum, devicto* Haroldo *Rege, cum ſuis Complicibus; qui mihi Regnum divinâ providentiâ deſtinatum & beneficio conceſſionis Domini & cognati mei glorioſi Regis* Edwardi *conceſſum conati ſunt auferre.* And this Donation he calls an Hereditary Right in divers other Charters, as particularly in one alſo recorded by *Inſpeximus*, beginning thus, *In nomine Patris & Filii & Spiritu ſancti, Amen. Ego* Willielmus, *Rex Anglorum hæreditatio Jure factus.* So likewiſe his Son King *Henry* I. in his Charter to the Abbot of *Ely*, creating him a Biſhop, calls himſelf the Son of *William* the Great, (not the Conqueror,) *Qui* Edwardo *Regi Hereditario jure ſucceſſit in Regnum.*

Per Inſpex. 1. *E.* IV. *Part.* 7. *m.* 26. *Vid. Selden's Review*, p. 483.

Charta. 4. *E.* 4. *m.* 27. *per Inſpex.*

Vid. Seldeni ad Eadmer. notæ, &c. Fol. 211.

And in vertue of this Donation, he was after his Victory againſt *Harold*, by publick and full Conſent of the whole Nation, or People of *England*, as alſo of the *Normans* he brought with him, *Elected* or Crowned King, and at his Coronation took the ſame Oath at the High-Altar at *Weſtminſter*, which his Predeceſſors the *Saxon* Kings had taken before him; with this one Clauſe farther, which was very neceſſary to be done at that time, *viz. quod æquo Jure Anglos & Francos tractaret:* So that let his Title by Conqueſt have been what it would, it was either by a juſt Right of War, to recover his Due, or by none at all; if the former, he could only ſucceed to ſuch Rights as King *Edward* the Confeſſor before exerciſed and enjoyed; ſince he came hither only to take the Crown that was ſo bequeathed to him, and to hold it under that Title: But if he had no Title at all, but his Sword, he then could obtain no juſt Right to the Crown of *England*, either for himſelf or his Succeſſors. So that if they will only inſiſt upon their Title by the Sword without any preceeding or ſubſequent Right, they may be as lawfully turned out again by the Sword; ſince it is own'd by all Writers on this Subject, that a Conqueror in an unjuſt War can obtain no Right over a free People.

Flor. Wig. Will. Gean. ad hunc Ann. Wil. Malms.

So much for the Matter of Fact: I come in the next Place to the Point of Right by the Laws of Nations. I grant indeed that a ſimple Oath, or Pact between an abſolute Monarch and his Subjects, to do or perform ſuch or ſuch a Thing; or to let them enjoy ſuch and ſuch Privileges, does not immediately give the People a Power to compel ſuch a Monarch, and his Succeſſors, by Force of Arms, to the ſtrict Obſervance of them, in Caſe of a Violation on his Part. But our Caſe is very different from this; for here a Foreign Prince recovers a former Right to the Kingdom, and that by Force; and is inveſted with the Crown, in virtue of that Right by which he claimed it, and is alſo ſworn to maintain the ancient

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Government and Laws; according to which the whole Legiſlative Power was not in the King alone, but jointly in the King, and the great Council of the Nation, without whoſe Grant, or Conſent, he ought not to have laid any Taxes upon, or otherwiſe oppreſſed the whole Nation, as I ſhall prove if there be occaſion. Now all our Antient Rights being granted, and acknowledged by him, and a conſtant Common Council of the Kingdom appointed to meet, to ſee them obſerved, as it did many Times in this King's Reign, as alſo in thoſe of his Succeſſors, they were not bare Privileges conferred of Favour, and which might be obſerved or broken at the Will of the Prince that granted them; but a Form or Rule of Government by Laws, confirmed and agreed upon in a ſtanding Council, appointed not only to make them but alſo to ſee them obſerved: As appears by that Paſſage ſo often cited, wherein the King is expreſly ſaid to have a Superior, *viz.* the Law, and the Court of Barons, who were to put a Bridle upon the King, in caſe of his governing without Law. And this farther appears, by the great Charters of *Henry* I. K. *Stephen*, and K. *John*, &c. in the firſt of which it is declared, that the Nation having been oppreſſed by unjuſt (*i. e.* illegal) Exactions, he therefore forbids all *Common-Money*, or Taxes, not taken through all Cities or Counties, in the time of K. *Edward*; and alſo confirms the Laws of his Father, whereby his Barons, and Tenants in *Capite*, ſhould be free from all Taillage or Taxes; and he alſo thereby reſtored to them the Laws of K. *Edward*, with thoſe Emendations which his Father had made by the Common Council of his Barons. Now the great Charter of K. *John* was but an Addition, or rather Explanation of this Charter of K. *Henry* I. which was at firſt demanded by the Barons to be again confirmed by this King, at the Inſtigation of *Stephen Langton* Archbiſhop of *Canterbury*, as *Mat. Paris* ſhews us at large. *P.* 240, 241,

Now ſince neither K. *William* the I. nor his Succeſſors, ever changed the Fundamental Conſtitution of the Government, as to the Legiſlative Part of it, (as hath been already proved) and that thoſe Breaches that had been made upon it, by taking Taillage or Taxes, without the Conſent of the great Council, are all hereby expreſly forbid; theſe are certainly more than ſuch meer Privileges, which the King himſelf is the only Keeper of, and can diſpenſe with at his Pleaſure; but are indeed ſuch Fundamentals as concern the very conſtituent Form or Rule of Government; which, as I have alſo proved, was mix'd not limited, in the very firſt Inſtitution. And though the learned *Puffendorf* agrees with you in the Caſe of Compacts between an abſolute Monarch and his Subjects; yet as to the Point in hand he is wholly of my Mind, as you may ſee in his Academick Diſſertations, in his Diſcourſe *de Interregnis*; where arguing againſt Mr. *Hobbs*, who will not allow of any Compacts between an Abſolute Prince and his Subjects, he has this Paſſage, which I ſhall here read to you in *Engliſh*. *P.* 272.

" That though in Pacts, in
" which a Submiſſion on either Part is wanting, certain and defined Performances
" may be ſet forth, to be obſerved on either Side, from an intrinſick Impulſe of
" Conſcience; when either of theſe refuſe to perform them, nothing but War or
" the Compulſion of a Superior Lord, common to both of them, remains; yet
" in Pacts, by which one Party is made ſubject to the other, it belongs to the
" latter to define what ought to be performed by him, as alſo a Power over the
" other, compelling him to the Performance whether he will or no; which Power
" does not belong reciprocally to the other Party againſt the former. Hence the
" Party commanding cannot be queſtioned for a Breach of Compact, unleſs he ei-
" ther wilfully abdicate all Care of the Commonwealth, or put on an hoſtile Mind
" towards his Subjects; or manifeſtly, or deceitfully, (in *Latin*, *dolo malo*) depart
" from the Rule of governing; on whoſe Obſervance, as upon a ſubſequent Con-
" dition, the Subjects Allegiance depends, which is eaſily to be avoided by any
" Ruler; if he will conſider, that not the higheſt of Mortals are free from the
" Laws of Human Chance. So that let the Power of your Conqueror have been never ſo great, or abſolute; it is plain, he not only renounced it himſelf, but ſeveral of his Succeſſors have done the ſame for themſelves, and their Heirs; therefore make the moſt of it, they muſt ſtill claim by vertue of the firſt Contract, to maintain the Conſtitution as they found it; or elſe reſolve all their Right into meer Force; and then *vim vi pellere licitum eſt.*

M. It is no wonder that you and I differ in our Concluſions, ſince we alſo differ ſo much in the Premiſes; and in the very Matter of Fact, concerning King *William* the Conqueror's coming to the Crown; you ſaying, he came to it partly by

the Sword, but founded on a Donation of *Edward* the Confeſſor; and partly by the Conſent and Election of the People of *England*; yet you your ſelf cannot deny, but Force or Conqueſt had a great Share in the Buſineſs, and indeed was all he had; for as for that Donation of K. *Edward* it is either forged, or elſe K. *William* could claim nothing by it, ſince *England* was then either an Hereditary Kingdom or Elective; and take it which way you will, this Donation of the Confeſſor's could ſignify nothing, either to the Prejudice of the People that were to Elect, or the next Heirs who were to ſucceed after K. *Edward*'s Deceaſe; neither could he claim as Heir to him by Blood; for the Relation between him and K. *Edward* was by his Mother *Emma*, Siſter to *Richard* the Second Duke of *Normandy*, this *William*'s Uncle; ſo that the Conqueror was no way deſcended from the Blood Royal of *England*: Therefore his true Quarrel with *Harold*, (let his Pretence be what it will) was not, becauſe he kept a Kingdom bequeathed to him by K. *Edward*; ſince ſome Writers relate this King named not him but *Harold* for his Succeſſor; tho' others ſay, that he recommended *Edgar* to the good Will of the *Engliſh* Nobility. So that the only true and juſt Cauſe Duke *William* had of making War upon *Harold*, was his breaking the Promiſes and Oath he had not long before made him of ſecuring the Kingdom of *England* for him upon the Death of K. *Edward*; inſtead of doing which he had ſeized it for himſelf; and which is worſe refuſed to reſtore it, or ſo much as hold it of Duke *William* as his Homager. So that though for the ſtrengthning of his own Title, he pretended to the Will or Donation of King *Edward*; and to avoid the Envy of the Name, might out of Modeſty, or to put a better Colour upon this Matter, refuſe to take the Title of Conqueror, and to inſiſt upon the Donation of King *Edward*; yet nothing is plainer, than that he could claim by no other Title but the Sword. And that he looked upon himſelf as no other than an abſolute Conqueror, may appear by theſe great and evident Inſtances: 1. His Change of the *Engliſh* Laws, and introducing the *Norman* Cuſtoms in their Stead; and alſo changing the Tenures of Lands, not only of the Laity but alſo of the Biſhops and greater Abbeys. 2. By his debarring all thoſe of the *Engliſh* Nation, from enjoying any Honour, Office, or Preferment, either in Church or State; and alſo in taking away the Eſtates of all the Nobility and Gentry, not only of thoſe Heirs that had been ſlain in the Battel of *Haſtings*, but alſo of the reſt; ſo that they had left them but what they could purchaſe of thoſe *Norman* or *French* Noblemen, to whom King *William* had given their Lands, as a Reward of their good Service. For the Proof of both which Aſſertions, I have ſo very good Authority on my Side, and that of Writers of or near thoſe Times in which theſe Things were done, that I think no indifferent Man can have any Cauſe to doubt the Matter of Fact to have been as I relate it; nor did he by any After-Act ever renounce this Right of *Conqueſt* as you ſuppoſe, much leſs refer it to the Election of the *Engliſh* or *Normans*; ſince the former were not in a Condition to make any farther Reſiſtance againſt him, the Clergy and great Men of the Kingdom having been forced to ſubmit themſelves to him without any other precedent Conditions or Stipulations, than for the ſaving of their Lives. And as for the *Normans*, they were his Subjects, and they conquered the Kingdom only for his Uſe and Benefit, as his Soldiers and Vaſſals; and it is not likely he would owe the Kingdom which he had thus acquired by the Sword, to their Votes or Election; neither does any Author that I know of mention any Election before his Coronation; when tho' it is true, he took ſuch an Oath as you mention, yet it was in too general Terms to bind him to any Obſervation of the Ancient *Engliſh* Laws, much leſs to preſerve their Rights and Privileges, farther than he thought fit, and therefore could never take the Crown upon your Conditions of Reſiſtance or Forfeiture, in caſe of any Alteration in that which you call the Fundamental Conſtitution.

Vi. Hovenden pars prima, p. 449. Will. Malmſ. Lib. 2.

This being the true Matter of Fact without any Diſguiſe, it is eaſy to anſwer all that you have ſaid againſt K. *William*'s acquiring an Abſolute, Hereditary Right to the Crown of *England* for himſelf, and all his Deſcendants by the Sword. Firſt then, As to the Juſtice of the War, and Conqueſt it ſelf, I ſuppoſe you will not deny, but that Duke *William* had a good Cauſe of War againſt *Harold* for the Breach of his Oath; and if ſo, againſt all that took his Part at the Battel of *Haſtings*; ſo that upon the Conqueſt of *Harold*, and thoſe that were in that Fight, he alſo acquired a Right by Conqueſt to all that they enjoyed; and conſequently had a Right to *Harold*'s Crown, as well as his other Eſtate; as alſo to the Eſtates of all

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thoſe that were either ſlain, or eſcaped alive from that Battel; and not only to theſe, but alſo to all the Lands of the whole Kingdom; ſince the War was made not only againſt *Harold*'s Perſon, but againſt the Kingdom of *England*; the People of which, according to their Allegiance, aſſiſted him in that War, either with Men or Money. But admitting the War to have been in it ſelf never ſo unjuſt, yet all Writers on this Subject (even *Grotius* and *Puffendorf*) grant, that Conqueſt even in an unjuſt War, with a thorough Settlement in the Conqueror and his Succeſſors, by the Non-claim, Dereliction, Submiſſion, or Extinction of the next Heirs of the former Kings, together with a long uninterrupted Poſſeſſion beyond all Time of Memory, will confer a good Title; eſpecially when all theſe were confirmed by a conſtant Submiſſion and Recognition of the People, teſtified not only at the firſt Conqueſt, but in all ſucceeding Times, by as abſolute and unconditioned Oaths of Allegiance as can be invented, or that were ever taken to the moſt Abſolute Monarch: And ſuch Oaths are always to be interpreted in Favour of the Prince to whom they are ſworn, and as ſtrictly againſt the People that take them; as all Writers alſo agree. Now, granting this to be the Caſe of King *William* the Conqueror, that by all or ſome of theſe Means he acquired a Right to the Crown, not only for himſelf, but his Heirs; this Power was Abſolute, without any Conditions to be obſerved on their part: For the Oath of Allegiance is poſitive, without any Condition or Reſtriction. So that I can ſee no manner of Pretence that the People of this Nation can have, of forcing their Kings to the Maintenance or Obſervation of thoſe Rights and Privileges, which they, their Predeceſſors, or Anceſtors have ſo freely granted to them; as *Puffendorf*, whom you now cited, very rightly obſerves; and conſequently can have no Right to repel Force by Force; ſince our Kings do not now hold their Crown by Force or mere Conqueſt, but by all other Things required by the Law of Nations to create a full and abſolute Right, *viz.* a long uninterrupted Poſſeſſion, and the Abſolute Submiſſion of the People for themſelves, and all their Deſcendants. So that tho' I grant bare Conqueſt, conſidered as a Force, can give no Right alone, yet it may often be the Mother of Right, and may at laſt grow to a ſufficient Right, by the Means I have already mentioned.

Vid. *Grot. l.* 2. *c.* 4. *Puff. l.* 7. *c.* 6. §. 16. *c.* 7. §. 3, 4.

F. Before I reply any thing farther to what you have now ſaid to the Matter of Right acquired by your Conqueror and his Heirs, pray, in the firſt place, prove the Matter of Fact to have been as you lay it; and therefore produce your Quotations from the Authors you mention. But firſt give me leave to tell you, that Dr. *B.* and you are the firſt I have heard to make ſo light of this Teſtamentary Donation of *Edward* the Confeſſor, which the greateſt part of the Writers neareſt that Time, do ſuppoſe to have been really made on the behalf of Duke *William*; and that notwithſtanding this Bequeſt, *Harold* unjuſtly, and contrary to his own Oath, did by Force ſet the Crown upon his own Head, without any precedent Election of the Clergy, Nobility and People, as was required at that time, ſince it was impoſſible for them to meet in ſo ſhort a time. For King *Edward* dying on the Eve of *Epiphany*, was buried on *Twelfth-day*; and on the ſame Day *Harold* took upon himſelf the Crown, by the Conſent of ſome of the Biſhops and Nobility of his Faction then at *London*: So that he was certainly no better than an Uſurper. And therefore by the Conqueſt of *Harold* and his Party, your Conqueror could acquire no Right over all the Free People of *England*, ſince they never gave their Conſents to place *Harold* on the Throne; and conſequently King *William* could have no juſt Cauſe of making a Conqueſt upon the whole Nation, ſince neither did he ever in all his Reign (as I can find) call a Common Council of the Kingdom to recognize, or confirm his Title. And tho' it is true, *Harold* proving a Valiant and popular Prince, got the good Will of the common People by divers Acts of Grace, (which he had loſt by his violent taking the Crown from *Edgar Atheling*, the only remaining Male Heir of the *Saxon* Race) and found very many who were willing to fight for him, not only againſt the King of *Norway*, who had a little before invaded the Kingdom, but alſo againſt Duke *William*; yet all thoſe in his Army could amount to nothing near the whole Nation, who never contributed to the War by any publick Vote or Tax; and therefore did not countenance it by giving Money, or raiſing of Men, as you ſuppoſe: So that Duke *William* could not pretend a Right of making War againſt any body, but only *Harold* and his Accomplices. But as for the Teſtamentary Donation of *Edward* the Confeſſor, tho' you make ſo light of it, yet *Ingulph* ſays expreſly, that *Edward* the Con-

P. 68. *Edit. Oxon.*

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Confeſſor, ſome Time before his Death, ſent *Robert* Archbiſhop of *Canterbury*, as his Ambaſſador to Duke *William*, to let him know, "That he had deſigned him "his Succeſſor, not only by Right of Kindred, but by the Merit of his Virtue: And that after this, *Harold* coming into *Normandy*, promiſed upon Oath to aſſiſt him in it. And *Will. Malmesbury* ſays alſo, That *Edward*, the Father of *Edgar Atheling*, dying almoſt as ſoon as he came into *England*, King *Edward* his Couſin being dead, gave the Succeſſion of this Kingdom to *William* Duke of *Normandy*. With whom alſo agrees *William* of *Poictou*, and moſt of the reſt of the Hiſtorians of that Age, as well *Engliſh* as *Normans*: Nor do I know any of them, except *Simeon* of *Durham*, and *Roger Hoveden*, who make *Harold* to have been appointed Succeſſor by King *Edward*.

Page 93.

But I confeſs your main Objection is ſtill to be anſwered, *viz.* What precedent Right Duke *William* could have to the Crown of *England* by this Teſtament of King *Edward*, ſince it was then either an Elective, or elſe an Hereditary Kingdom, and ſo this Donation could confer no Right on this Duke, in Prejudice of the People's Right to elect, or elſe of the next Heir to ſucceed? In Anſwer to which, I muſt tell you that which perhaps you may have never conſidered, That the Crown was then neither properly Elective nor Succeſſive, but a Mixture of both.

M. That ſeems a Kind of a Paradox, and what I never heard before: Pray explain your ſelf, for I do not underſtand how it could be.

F. Why then, I will tell you: The Crown of *England*, in thoſe Times, was very like what the Crowns of *Denmark* and *Sweden* were not long ſince, and as the Empire is at this Day; in which tho' the Eſtates or Diet might chuſe whom they pleaſed for King or Emperor, yet they ſtill kept to the ſame Family or Line, as long as there were any Males left of it fit to ſucceed. Which Cuſtom often gave the King in Being a Power, (which by degrees came to be looked upon as a Kind of Right) either upon his Death-bed, or elſe at any Time before, to nominate or recommend one of his Sons, or near Kinſmen, to be his Succeſſor, by his laſt Will or Teſtament; eſpecially if he had no Sons of his own, as happen'd in the Caſe of King *Edward* the Confeſſor. Now this Nomination, tho' it did not alone confer a Right to the Crown, yet it made the Perſon ſo named the faireſt Candidate for it; and was ſuch a Recommendation to the Eſtates, or great Council of the Kingdom, as they never paſſed by or denied, as I can ever find by the beſt Enquiry I have made. And for Proof of this, I ſhall appeal to the Teſtament of King *Alfred*, as you will find it Printed from an Ancient Manuſcript, in the Second Appendix to his Life, in *Latin*, publiſh'd at *Oxford*. Which begins thus: "*Ego Alfredus divino munere, labore, ac ſtudio Athelredi Archiepiſcopi, nec non* "*totius Weſtſaxoniæ Nobilitatis conſenſu, pariter & Aſſenſu, occident alium Saxo-* "*num Rex; quos in Teſtimonium meæ ultimæ voluntatis complementi, ut ſint Advocati* "*in diſponendis pro ſalute animæ meæ regali electione, confirmo, tam de hæreditate,* "*quam Deus ac Principes, cum ſenioribus Populi miſericorditer ac benigne dede-* "*runt; quam de hæreditate quam Pater meus Æthelwulfus Rex nobis tribus fra-* "*tribus delegavit, viz. Æthelbaldo, Æthelredo, & mihi; ita, quod qui noſtrum* "*diutius foret ſuperſtes, ille totius Regni dominio congauderet*, &c. From whence you may collect, firſt, That tho' this King, in the very Beginning of his Teſtament, aſcribes his obtaining the Crown, not to any Hereditary Right, but the Conſent and Aſſent of the Nobility of *Weſt-Saxony*; yet he alſo here mentions the Entail of the Crown by his Father's Will, upon his Two Elder Brothers, and himſelf ſucceſſively, before any of his Elder Brother's Sons, who were living at the Time of the making of this Teſtament of King *Alfred*'s, as appears by the Will it ſelf, in which they are expreſly mentioned. Now how could this be, that he was King, as well by the Conſent or Election of the *Weſt-Saxon* Nobility, as by his Father's Will, unleſs both theſe had been required to make him ſo? And *Will.* of *Malmesbury* tells us of King *Athelſtan*, the Grandſon of King *Alfred*, that *Juſſu Patris in Teſtamento, Æthelſtanus in Regem eſt acclamatus*: But in the Beginning of this Chapter he alſo tells us, that *Æthelſtanus electus apud Regiam aulam quæ vocatur Kingſton Coronatus eſt, quamvis quidam Alfredus cum factioſis ſuis obviare tentaſſet*; upon that Pretence that *Athelſtan* was a *Baſtard*. So that you may ſee, that his Father's Teſtament was not ſufficient without the Election of the *Wittema Gemot*; who preferred him, tho' perhaps Illegitimate, before this *Alfred*, tho' Son to King *Alfred*'s Elder Brother, who was ſet up againſt him.

And I doubt not, if more of the Teſtaments of the *Engliſh Saxon* Kings were now extant, that I could give you more Inſtances of this Nature. But that the Perſon ſo nominated and elected, tho' not the neareſt always of Blood, claimed *Jure Hæreditario*, is alſo as certain, ſince *Bracton* expreſly tells us, "That *Hæreditamentum*, or Inheritance, is not derived *ab Hærede*, but Heir from Inheritance; and that Inheritance is the Succeſſion to all the Right which the Predeceſſor had, by whatever Means acquir'd. With whom alſo the Civil Law agrees, *Hæredis ſignificatione omnes ſignificare ſucceſſores credendum eſt, etſi verbis non ſint expreſſi.* Nor did this Cuſtom, of thus recommending a Succeſſor, prevail in *England* alone in thoſe Times, but alſo was in Uſe among the *French* Kings of the Race of *Charlemain*; wherein the laſt Will or Adoption of the King, being confirmed by the Election or Recognition of the Eſtates of *France*, gave a ſufficient Title to a Prince of the Blood Royal, tho' not Legitimate, nor the next Heir by Blood, to ſucceed: But the Will of the Prince was not alone ſufficient, as Monſieur *Mezeray* has very well obſerved in his Chronological Abridgment of the Hiſtory of *France*, in the Reign of King *Clotair* the Second.

So that to conclude; If Duke *William* of *Normandy* was thus adopted, named by King *Edward* the Confeſſor for his Succeſſor by his laſt Will and Teſtament; and this had been without any Blows confirmed by the Council of the Kingdom, by a ſubſequent Election and Coronation, and that he had received the Oaths and Recognitions of the *Engliſh* Subjects, which always followed that Solemnity; I doubt not but he would have had as good a Title to the Crown, as any of the Kings of the *Engliſh Saxon* Line: I am ſure a much better than *Harold*, who I am not ſatisfied came in either by the Adoption of King *Edward*, or by the Election of the People; and therefore Duke *William* had a good Title againſt him, as an Uſurper: And conquering him and thoſe of his Party in the Battel, and being thereupon Elected, and Recognized, and Crowned by the general Conſent both of the *Engliſh* and *Normans*; I cannot ſee why his obtaining the Crown againſt *Harold* by Force of Arms, ſhould extinguiſh his former Right, and create a new Title by Conqueſt, which he never claimed by; or ſuppoſe his renouncing the Confeſſor's Will, which gave him a Right to be Elected King, according to the Cuſtom of thoſe Times; and to demand the Crown from an Uſurper, who had ſolemnly ſworn to aſſiſt him in his Right. But ſince you ſo poſitively affirm, that no Author whatever mentions Duke *William*'s Election; I doubt not but to ſhew it you from more than one Author, and thoſe of or near thoſe very Times.

I ſhall, in the firſt place, give the Account that a ſhort Hiſtory, printed at the End of Mr. *Taylor*'s Hiſtory of *Gavel-kind*, from an Ancient Manuſcript in the *Bodleian* Library, gives us of this Affair, and who ſeems to be an Author that lived very near thoſe Times. *Londoniam Convenientibus Francis, & Anglis (ad nativitatem Domini) illiſq; omnibus concedentibus, coronam totius Angliæ, & Dominationem ſuſcepit.* And *William* of *Poictou*, this King's Chaplain, in his Hiſtory, relates it thus: *Die ordinationi decreto locutus ad Anglos concedenti ſermone Eboraci Archiepiſcopus ſapiens, bonus, eloquens, an conſentirent eum ſibi Dominum Coronari inquiſivit; proteſtati ſunt hilarem conſenſum univerſi minime hæſitantes, ac ſi cælitus unâ mente datâ, unâq; voce*; Anglorum *quam facillime* Normanni *conſonuerunt ſermocinato apud eos, ac ſententiam præcunctatoriam Conſtantini Præſule, ſic Electum conſecravit Archiepiſcopus, impoſuit ei diadema, &c.*

So likewiſe *Ordoricus Vitalis*, a *Norman* Author, who flouriſhed not long after in his Son's Reign, relates it thus: *Die natalis Domini Angli Londoniæ ad ordinandum Regem convenerunt, & Gulielmum Ducem Normannorum in Regem Anglorum conſecravit Archiepiſcopus, &c.* And goes on to relate the Manner how, juſt as the nameleſs *Engliſh* Author had done before; but then agrees with *William* of *Poictou* in all the reſt. *Dum Aldredus Præſul Alloqueretur Anglos, & Godofredus Conſtantinienſis Normannos, an concederent Gulielmum Regnare ſuper ſe, & Univerſi conſenſum hilarem proteſtarentur unâ voce non unius Linguæ locutione.* With whom alſo agrees *Will. Gemeticenſis*, in the Hiſtory of the Dukes of *Normandy*, who was alſo an Author that lived in, or very near the Times of this King. His Words are, *Anno incarnat. Domini, ab omnibus tam Normannorum, quam Anglorum proceribus Rex eſt electus, & ſacro oleo ab Epiſcopis Regni delibutus, atq; regali diademate Coronatus.*

L. 3. p. 503.

P. 288.

So that you ſee here are no leſs than Four Ancient Authors, of or very near that Time, who all agree upon the ſolemn Election of King *William*; and yet your

Dr. has the Confidence to tell us, that Mr. *Petyt* only endeavours to prove this Election of King *William* out of ſome Fragments of Authors, who lived at ſome Diſtance of Time from his coming over hither.

M. I confeſs you have ſhew'd me more for this mix'd Right of King *William*'s by Teſtament and Succeſſion, than ever I knew before. But you had dealt more fairly, if you had alſo added what Dr. *B.* takes notice of out of *Gulielmus Pictavienſis*, concerning King *William*'s being advanced to the Crown: For immediately after the Mention of his being Crowned, he concludes thus: *Cujus Liberi & nepotes juſta ſucceſſione præſidebunt Angliæ terræ, quam hæreditaria delegatione Sacramentis Anglorum firmata, & Jure Belli ipſe poſſedit.* So that here you ſee he grounds a Title to him and his Poſterity, not only on his Hereditary Right, but the Oaths of the *Engliſh*, and the Right of War. But as for the Word *Electus*, made uſe of by thoſe Ancient Authors, Dr. *B.* hath made it very plain in his Hiſtory of the Succeſſion of the Crown of *England*, as alſo in his Gloſſary, that this Word does not there ſignify Elected, but Recognized and Acknowledged, that ſuch a one is or ought to be King. And I very much doubt, whether this could be properly termed an Election or not, ſince the ſame Hiſtorians alſo tell us, that Part of King *William*'s Army kept Guard without the Church-Door, during his Coronation, by this good Token, that when they heard ſo great a Shout given upon the People's declaring their Aſſents, the Soldiers ſuſpecting ſome Treaſon, ſet Fire to the Houſes; So that I cannot ſee how that could be properly an Election, when the People durſt not refuſe. And I know that even at this Day, the King is ſhewn to the People on all the Four Sides of the Scaffold on which he is Crowned, and their Conſent is formally aſked, Whether they will have this Man to be their King? Yet no Man will ſay that their Acclamations and crying, Yea, yea, will make our Kings Elective, any more than it could do it in the Caſe of King *William*, who had a Title by Conqueſt precedent to this pretended Election; tho' I grant this Cuſtom may have been in uſe ever ſince this Coronation of the Conqueror.

B. A. P. p. 206.

But that King *William* claimed indeed by Conqueſt, and by no other Title, let us not mind his ſpecious colourable Pretences, but his Actions, which are the beſt Interpreters of the Thoughts of Princes; and we ſhall find, that through all his Reign he governed this Kingdom as a Conqueror: And this I ſhall prove, by making good the Three Inſtances I have already given, of his great Alterations of the Property, Laws, and Civil Liberties of the People of this Nation. To begin with the firſt of theſe.

For the Proof of which, I ſhall make uſe of the Authority of *Gervace* of *Tilbury*, a conſiderable Officer in the Exchequer, in the Time of *Henry* the IId. and who received his Information from *Henry* of *Blois*, Biſhop of *Wincheſter*, and Grandchild to the Conqueror, who is moſt full to that purpoſe; which he thus delivers in the Manuſcript Treatiſe, called the *Black Book* of the *Exchequer*, which I ſhall read to you according to the Learned Dr. *B.*'s Tranſlation of it.

B. A. P. p. 33.

'After the Conqueſt of the Kingdom, and the juſt Subverſion of the Rebels, 'when the King himſelf, and his great Men, had viewed and ſurveyed their new 'Acqueſts, there was a ſtrict Enquiry made, who they were which had fought 'againſt the King, and ſecured themſelves by Flight. From theſe and the Heirs 'of ſuch as were ſlain in the Field, all Hopes of poſſeſſing either Lands or Rents 'were cut off; for they counted it a great Favour to have their Lives given them: 'But ſuch as were called and ſollicited to fight againſt King *William*, and did not; 'if by an humble Submiſſion they could gain the Favour of their Lords and 'Maſters, they then had the Liberty of poſſeſſing ſomewhat in their own Perſons, 'but without any Right of leaving it to their Poſterity, their Children enjoying 'it only at the Will of their Lord; to whom when they became unacceptable, 'they were every way outed of their Eſtates, neither would any reſtore what they 'had taken away.

'And when the miſerable Natives repreſented their Grievances publickly to the 'King, informing him how they were ſpoiled of their Fortunes, and that with-'out Redreſs they muſt be forced to paſs into other Countries; at length, upon 'Conſultation, it was ordered, that what they could obtain of their Lords by way 'of Deſert or lawful Bargain, they ſhould hold by unqueſtionable Right; but ſhould 'not claim any thing from the Time the Nation was Conquered, under the Title 'of Succeſſion or Deſcent. Upon what great Conſideration this was done, is manifeſt '(ſays *Gervace*;) for they being obliged to Compliance and Obedience, to purchaſe

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'their Lords Favour; therefore whoever of the conquered Nation poſſeſſed 'Lands, *&c.* obtained them not as if they were their Right by Succeſſion or In-'heritance, but as a Reward of their Service, or by ſome intervening Agree-'ment.

This alone were ſufficient, coming from an Author of ſuch Credit, and living ſo very near the Time; but beſides this, I ſhall give you the Authority of divers other Authors to the ſame Purpoſe; and particularly *Ordericus Vitalis* (whom you but now cited) tells us how *William* I. circumvented the two great Earls of *Mercia*; and that after *Edwin* was ſlain, and *Murcar* impriſoned, then King *William* began to ſhew himſelf, and gave his Aſſiſtants the beſt and moſt conſiderable Counties in *England*, and made rich Colonels and Captains of very mean *Normans*: And that he thus diſpoſed of whole Counties to divers great Men, appears by *Domeſday* Book; wherein it is ſeen, that as the whole County of *Cheſter* was given by the Conqueror to *Lupus*, a *Norman*, ſo likewiſe the greateſt Part of *Shropſhire* was given to *Montgomery*.

And further, he took away from the *Engliſh* their Eſtates, and gave them to his *Normans*; and this he did from his firſt coming in: For *Fitz Osborn* was made Earl of *Arundel* and *Hereford*, at his firſt coming in, and was Lord of *Bettivil* in *Normandy*, and eſtabliſhed the Laws of that Town at *Hereford*. *Alan* Earl of *Britain*, had all Earl *Edwin*'s Lands given to him at the Siege of *York*, about three Years after his Arrival. To theſe I may add the 795 Mannors *Robert* Earl of *Moreton* in *Normandy* and *Cornwal* in *England*, had given to him by King *William*; ſo likewiſe *Alan* Earl of *Britain* and *Richmond* had 442 Mannors, and *Jeffery* Biſhop of *Conſtance*, had 280 Mannors given him by the Conqueror; beſides many other Lands of the *Saxon* Earls, *Thanes*, *&c.* were all given to the *Normans*, who took their Title from King *William*'s conquering Sword.

So that I think it is very evident, that this King had diſtributed moſt of the Lands of the Nation to his *Normans*, long before the famous Survey of *Domeſday* Book was begun; and by that infallible Record, it is clear, that he gave near all the Lands of the Nation to his Followers, and very little or none to the *Engliſh*, who held what they had by a new Title, and new Services from the Conqueror, or his great Lords; or became Tenants to, or Drudges upon their own Lands; as we alſo learn from *Bracton* and *Fleta*. Here is enough to ſatisfy any unbyaſſed Perſon, that the Conqueror did not lay by his Sword after the Battel of *Haſtings*.

F. In anſwer to what you have now ſaid concerning your Conqueror's taking away the Lands of a great many of the *Engliſh* Nobility and Gentry, it is ſo apparent in Matter of Fact, that it were a high Piece of Impudence to go about to deny it; yet will it not therefore follow, that what he thus diſpoſed of was near all the Lands of *England*, as I ſhall ſhew you by and by: But in the mean time, to let you ſee that I am a fair Adverſary, I will at preſent ſuppoſe, that King *William* took away all the Lands from the former Owners, and gave them to his Followers, who help'd him in his Conqueſt; but theſe were not only the *Normans*, his Subjects, but *French*, *Flemmings*, *Anjovins*, *Britons*, *Poictovins*, and People of other Nations, who made up a great Part of his Army, and came in with him under divers great and conſiderable Men, their Leaders; and whom, your Doctor tells us, came not out of ſtark Love and Kindneſs, without any Conſideration of ſharing with and under him in the Conqueſt. Now I deſire to know by what Law or Act of theirs, they thus conſtituted King *William* an Abſolute Monarch over them, and their Deſcendants? For, as for the *Normans*, tho' they were (it's true) his Subjects, yet they enjoyed divers conſiderable Rights and Privileges at home, and ſurely never intended to come over hither, to make themſelves as great Slaves as the People they had conquer'd; much leſs can it be ſuppoſed of theſe of other Nations, who were not Subjects to Duke *William* before he was made King. Nor can I ſee how their taking of Lands from him, could make him become an abſolute and irreſiſtible Monarch over them, and their Deſcendants. So that if upon your Suppoſition, all the Owners of Land in *England* at this Day, hold their Eſtates either by Deſcent or Purchaſe from thoſe Ancient *Normans*, or *French* Proprietors, they muſt alſo ſucceed to the ſame Liberties and Privileges as thoſe under whom they claim, did formerly enjoy; and therefore can no more than their Predeceſſors, be abſolute Vaſſals by Right of Conqueſt. But before I conclude, I cannot but take Notice of what you have

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ſaid againſt my Proofs of the formal Election of King *William*; for if the keeping of a Guard about the Place where the King is Elected and Crown'd, ſhould void the Freedom of the Election, I doubt whether the Election of any elective Kings or Monarchs, even of the *German* Emperor himſelf, would hold good. As for the other Reaſon, that they could not chuſe but elect him, that is yet more trivial; for there being no more than one that ſtood to be choſen, they could indeed chuſe no other: But if not having a Liberty to refuſe, muſt void the Right of Election, pray conſider (as I told you before,) Whether there be any Canonical Election of Biſhops in the Church of *England* at this Day. Therefore I doubt not but that King *William* I. was as lawfully and freely elected, as King *Edward* the Confeſſor, his Predeceſſor, whom all Authors agree to have had no other Title; and *Willielmus Gemeticenſis*, in the Place I now cited, tells us, he was elected King as well of the *Norman* as *Engliſh* Nobles: And if the Cuſtom had not then been to elect the King before he was Crown'd, it is not likely that your Conqueror would have introduc'd a new Cuſtom to the Prejudice of his pretended Right by Conqueſt. But indeed there is not any more cogent Argument to prove that the Crown was formerly elective, than the conſtant Uſage (as you your ſelf confeſs) ever ſince your pretended Conqueſt to this Day, of asking the People whether they are content to have ſuch a one for their King. As for your Doctor's Quotation out of *William* of *Poictou*, pray take Notice, that he places your Conqueror's Hereditary Bequeſt, together with the Oaths of the *Engliſh*, as his beſt Title, and the Right of War laſt; by which this Author did not underſtand a Conqueſt of the People of *England*, but his prevailing againſt *Harold*.

M. I do own with the learned Dr. *B.* that the Deſcendants of thoſe ancient *Norman* and *French* Earls and Barons that came in with the Conqueror, and their Poſterity afterwards, feeling the Yoke of feudal Tenures, and other Prerogatives this King and his Deſcendants exerciſed over them, to preſs as hard upon them, as on the ancient *Engliſh*, were thoſe that made ſuch a Diſturbance for their Right and Liberties in the Reign of King *John*, and *Henry* III. And tho' I grant their Anceſtors were never conquer'd, and conſequently could not be obliged to him, as to a Conqueror; yet I may, for all this, maintain, that they and their Poſterity were as much bound to an abſolute Subjection, without any Reſiſtance, as the *Engliſh* whom they conquer'd; for they were either his own Subjects in *Normandy*, before his coming over hither; or elſe were ſuch Voluntiers who followed him out of Hopes of Eſtates and Preferment. As for all thoſe of the former ſort, and who were his Subjects before, they were tied not only by their own Oaths of Allegiance which they had taken in *Normandy*, but were alſo bound by the ſame Obligation of Non-Reſiſtance, as all other Subjects muſt always be, both in that and all other Governments. To all which was added another Obligation in reſpect of thoſe who were not his Subjects before his Entrance; ſince this whole Kingdom was by Conqueſt the Conqueror's, as appears in that he beſtowed the greateſt Part of it upon his Followers, (whoſe Blood runs at this Day in the Veins of moſt of our *Engliſh* Gentry and Nobility,) as a Reward for their Service and Aſſiſtance: Tho' he might leave ſome part to the *Engliſh* Natives and their Heirs; yet *ſo as that* he altered the Tenure, and made it deſcend with ſuch Burdens as he pleaſed to lay upon them. So that as well his own Countrymen, *Normans*, as thoſe of all other Nations, who thus became Subjects and Feudataries to him for all the Lands they poſſeſſed in *England*, (ſince he was the only *Directus Dominus*, or Lord Paramount of the whole Kingdom) were alſo his Vaſſals and Subjects; for in caſe of Treaſon and Rebellion, or Death without Heir, thoſe Lands were to return to him again, and to be at his Diſpoſal. So that all Subjects, as well *Normans* as other Foreigners, who had Lands granted to them by the Conqueror, thus became his *homines Legei*, Liegemen, and did owe Faith and true Allegiance to him, as their Supreme and Liege Lord, as the King is called in ſeveral Statutes; and the Definition of Liegeancy is ſet down in the grand Cuſtomary of *Normandy*, *Ligeantia eſt ex qua domino tenentur vaſalli ſui, &c.* that is, Liegeancy is an Obligation upon all Subjects to take part with their Liege Lord againſt all Men living, to aid and aſſiſt him with their Bodies and Goods, and with their Advice and Power; not to lift up their Hands againſt him, nor to ſupport in any wiſe thoſe who oppoſe him. And tho' I grant, that the Supreme or Liege Lord is likewiſe bound to govern and defend his Liege People, according to the Rights,

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Cuſtoms,

Cuſtoms, and Laws of the Country; yet is he not liable to Reſiſtance, much leſs Forfeiture if he neglect it. For though if Subjects break their Covenants, and prove diſloyal, all their Lands and other Rights are forfeited to the King; yet, if the King or Supream Lord break his Oath, notwithſtanding his failing therein, neither his Crown, nor any Rights belonging to his Royal Dignity are thereby forfeited. The Reaſon of this Inequality is becauſe the King gave Laws to the People, but the People did not give Laws to him. So that it is plain, that however you ſtate the Conqueror's Entrance, whether by the Sword, or (to avoid the Envy of the Title of a Conqueror) by a voluntary Submiſſion of the *Engliſh* Nation to him, as to their Sovereign; the Concluſion cannot vary, becauſe the Duty of Non-reſiſtance ariſes from their own Act, they taking an Oath of Allegiance to be his True and Loyal Subjects, with which Oath Reſiſtance can by no means conſiſt.

F. I muſt beg your Pardon if I cannot take what you have now ſaid for a ſatisfactory Anſwer; ſince I doubt it will do you little Service, whether you make uſe of it either in reſpect of the *Normans*, or other Foreigners. For as to the former, it appears from the ancient Conſtitution of *Normandy*, that the Duke was no Abſolute Monarch there, but a Feudatary to the King of *France*; and farther, could make no Laws, nor impoſe Taxes in *Normandy*, without the Conſent of the Eſtates of that Dutchy; as appears by the Title to the *Latin* Cuſtoms of *Normandy*, which are at the End of the Old *French* Edition of the *Conſtumer de Normandy*, Printed at *Roan*, 1515; the Title of which is thus, *Jura & Conſuetudines Ducatus Normaniæ.* The Pr logue to which begins thus; *Quoniam Leges & Inſtituta quæ Normanorum Principes, non ſine magna proviſionis Induſtria Prælatorum, Comitum, & Baronum, nec non & cæterorum virorum prudentum conſilio, & Aſſenſu ad ſalutem humani fœderis Statuerunt.* Whereby it is apparent, that the Antient Laws of *Normandy* were made by the Advice and Conſent of the Eſtates, for the Preſervation of that Covenant they had formerly made with their firſt Duke *Rollo*, when he had that Dutchy granted him by the King of *France*. And whoever will conſult the antient Hiſtories and Laws of that Dutchy, will find the Dukes of *Normandy* no more abſolute Monarchs there than the Kings of *Norway*, from whence they came; ſo that if their Duke ſhould have gone about to take away their Eſtates, or enſlave the Perſons of the *Norman* Nobility and People, he might juſtly have been reſiſted by them. And therefore their taking Lands from K. *William* after his pretended Conqueſt here, muſt either have conferred an Eſtate upon them according to the Laws of *England*, or *Normandy*; not according to the former; for you aſſert, that Tenures in *Capite*, and Knight's Service, were introduced by his coming; ſo that if they were by the *Norman*'s Law, (as you ſuppoſe) they were then no farther Subjects to their Duke by that Tenure, when made King of *England*, than they where whilſt he was Duke of *Normandy*, *viz.* only according to the Laws and Cuſtoms by which they held theſe Eſtates: So that if their Duke was irreſiſtible by them in Caſe of Tyranny in his own Country, ſo he was alſo here by the ſame Reaſon; ſince whatever he did in reſpect of the *Engliſh*, he could acquire no new Right over them.

And that an Oath of Homage alone, doth not make the Perſon to whom it is taken irreſiſtible, if he makes an unjuſt War upon his Vaſſals, appears by the Dukes of *Normandy* themſelves, who though they held that Dutchy by Homage to the King of *France*, and took the ſame Oath to him upon every King's Acceſſion to the Crown, of being his Liegeman, and to be True and Faithful to his Lord the King of *France*, for the ſaid Dutchy of *Normandy*; yet might the Dukes of *Normandy*, without any Imputation of Rebellion, have reſiſted the King of *France*, in caſe he made an unjuſt War upon them; nor were ever thoſe Dukes accuſed of Rebellion for ſo doing, in all the Wars that they had with the Kings of *France*. And therefore the holding of an Eſtate by Homage and Fealty, doth not ſuppoſe that the Lord of whom it is held was irreſiſtible, nor doth the Word Allegiance ſignify any more than that Duty which the Liegemen, by the Old *Norman* Law, owed to their Supreme Lord of whom they held their Lands. And therefore when the King or Supreme Lord of the Fee did not perform his Part of the Contract, but went about to turn them out of their Eſtates, or to invade any of their juſt Rights by Force, it was uſual for the Tenants in thoſe Times to defy the Lords, and renounce their Homage to them; for which they uſed the Barbarous *Latin* Word *diffidare*, in *French* to defy, that is, to renounce that Faith and Allegiance, which before they owed them; and the Supream Lords alſo often-

Vid. Spelman's Gloſſary, *ſub verbo diffidare.* P. 388.

times defied their Tenants. Thus *Mat. Paris* tells in *Anno* 1233, that K. *Henry* the Third, by the Counſel of the Biſhop of *Wincheſter*, defied *Richard* the Earl Mareſchal. And the Year following we find the Earl juſtifying himſelf in this manner (being then in *Ireland*); "First I anſwer, that I never acted Treaſonably
Ibid. p. 398. "againſt the King, for he has unjuſtly ſpoil'd me of my Office of Mareſchal, "without the Judgment of my Peers, and has proclaimed me baniſh'd thorough "all *England*; he has burnt my Houſes, deſtroyed my Lands, *&c.* he has more "than once defied me, when I was always ready to ſtand to the Judgment of my "Peers; from which time (ſaid he) I ceaſed to be the King's Liegeman, and was "abſolved from his Homage, not by my ſelf, but by him. And whereas you ſay, that the King, or Supreme Lord, cannot forfeit his Right, though he breaks his part of the Compact, becauſe of the Inequality which there is between a King and a Subject: If ſo, then this Prerogative of Non-Reſiſtance doth not belong to the King, as he is Supreme Lord of the Land, but as he is King, and giveth Law to the Subjects; which may have ſome Colour of Truth in Abſolute Monarchies, but was of no Force either in the Government of *Normandy* or *England*, where the Duke or King, without the Conſent of his Eſtates, never could alone make Laws. But as I will not deny our Government to be a Monarchy, ſo it is as certain, that it is limited in the very Conſtitution, either by the *Saxons* or *Normans*, begin where you pleaſe: And therefore my Concluſion ſtill holds good, that if the *Engliſh* have now ſucceeded to thoſe very Lands and Privileges which the *Normans* anciently enjoyed, then whatſoever Right or Liberty the *Engliſh* Proprietors of Eſtates do at this Day enjoy, they do not only hold them as the Succeſſors and Deſcendants of thoſe *Normans* and *Frenchmen*, but are alſo reſtored to them *Jure poſtliminii* (as you *Civilians* term it) ſince they never ſubmitted themſelves, or took an Oath of Allegiance to King *William* and his Heirs, but only to himſelf Perſonally; there being no ſuch Clauſe in any Oath of Allegiance, till it was ſo ordained many Ages after in the Reign of King *Henry* the Fourth; nor was this Oath ever taken by our *Engliſh* Anceſtors to K. *William* as to a Conqueror, but the lawful Succeſſor of K. *Edward* the Confeſſor; and K. *William*'s actual taking away the Eſtates of a great many of the *Engliſh* Nobility and Gentry, contrary to his own Oath, and without any juſt Cauſe, could no more give him a Right ſo to do, than if *Henry* the Fourth, or *Henry* the Seventh, both which came to the Crown by the Aſſiſtance of a Foreign Force, ſhould upon a Pretence of being Conquerors have govern'd by an Army, and ſo have taken away whoſe Eſtates they pleaſed, and given them to their Followers that came over with them.

M. I ſhall not diſpute this Matter with you any further; therefore pray proceed to the other Point you took upon you to prove, that King *William* did not take away ſo great a Share of the Lands of *England*, as the Dr. and thoſe of our Opinion affirm.

F. I ſhall obſerve your Commands; and therefore in the firſt Place I deſire you to take notice, that according to the Doctor's own ſhewing, your Conqueror never took away the Lands of all the Biſhops and Abbots of *England*, much leſs thoſe that belonged to Deans and Chapters, or to private Churches; and if his Nobles or Followers had unjuſtly diſſeized any Biſhop or Abbot of their Eſtates, the King cauſed them to be reſtored again; as appears by many Preſidents of this Kind, which are to be found in *Ingulphus* and *Eadmerus*. This being premiſed, let us ſee in the next Place, what Proportion the Lands belonging to the Church, did in thoſe Days bear to the reſt of the Lands in *England*. Now we find in *Sprot*'s Chronicle, as alſo from the old Leiger-book, cited by Mr. *Selden* in his Titles of Honour, and particularly from that *Secretum Abbatis* (formerly belonging to the Abbey of *Glaſſenbury*, and now in the Library of the Univerſity of *Oxon*) that there were not long after your Conqueſt, 60215 Knight's Fees in *England*, of which the Biſhops, Abbots, and other Churchmen then enjoyed 28015, when it is ſuppoſed this Account was taken. Then it will follow, that in the Reign of your Conqueror there were above 28000 Knight's Fees, which belonged to the Church. And in theſe we do not any where find that K. *William* diſpoſſeſſed their Tenants of their Eſtates, moſt of which were held in Fee under them, and thoſe Tenants were great and powerful Men in their Countries; and hence we read in the ancient Records and Leiger-Books, of the Barons and Knights, that held of divers Biſhops and great Abbots; ſeveral Examples of which you willfind in Sir
P. 84. *Henry Spelman*'s Title *Baro*. Now it is certain that K. *William* could not turn all theſe Men out of their Eſtates, and give them to his Followers, without committing

mitting Sacrilege, and invading the Rights of the Church, which that King durſt not commonly do. So that the utmoſt you can ſuppoſe he could do, was to take the Forfeitures of all ſuch Tenants of the Church, who had taken Part with King *Harold*, or had any ways committed Treaſon againſt himſelf, which were far from the whole Number of them: So that here goes off at once almoſt a Half of all the Lands held by Knights Service, which the King did never diſpoſſeſs the ancient Owners of. To theſe may alſo be added all Tenants in ancient *Demeſne*, all Tenants in *Soccage*, as alſo all Tenants in *Gavelkind*, which in thoſe Days made at leaſt Two Thirds of the Lands of *Kent*, which by the way was never conquer'd, but ſurrender'd upon Terms, to ſave their aucient Cuſtoms and Tenures, as Mr. *Cambden* himſelf acknowledges in his Deſcription of this County; beſides what was held in other Counties by the ſame Tenure; as you will find in Mr. *Taylor*'s Hiſtory of *Gavelkind*: All which not being Tenures in chief by Knight's Service, are not regiſter'd in *Doomeſday-Book*; nor does it appear that the Owners were ever diſpoſſeſſed of them. To which may alſo be added the Lands of divers of thoſe ſmaller *Thanes*, or Officers of King *Edward*, whoſe Names are found in *Domeſday-Book*, who held their Lands *ratione officii*.

To all theſe we may alſo add, all ſuch *Norman* Noblemen and Gentlemen, who were many, that having come into *England* in *Edward* the Confeſſor's Time, and having Honours and Lands given them by him, had continued here ever ſince: And theſe were ſo numerous, that it was thought worth while by King *William* to make a particular Law concerning them, that they ſhould partake of all the Cuſtoms, the Rights and Privileges of native *Engliſhmen*, and pay Scot and Lot as they did; of theſe were the Earl of *Morton*, beſides many others whoſe Names appear in *Domeſday-Book*. And not only theſe Men but alſo divers Cities and Towns held Lands of King *William* by the ſame Rents and Services, as they had formerly paid in the Time of King *Edward* the Confeſſor, as *Oxford* for Example. But to give an Anſwer to ſome of your Inſtances, as when you ſay that King *William* gave away whole Counties, as all *Cheſhire* to *Hugh Lupus*, and the greateſt Part of *Shropſhire* to *Roger de Montgomery*, &c.

Vid. Leges Gulielmi.

Vid. Domeſday Book in Oxfordſhire.

It is a great Error to ſuppoſe that theſe Earls had all the Lands mentioned in theſe Counties to diſpoſe of at their Pleaſure, and that they turned out all the old Proprietors, which it is certain they did not; as I could prove to you by ſeveral Inſtances of ancient *Engliſh* Families who have held their Lands and enjoyed the ſame Seats they had in the Conqueror's Time. So that you ſee there is a great deal of Difference between a Grant of all the Land of a County, and that of a whole County: What is meant by the former is plain, but as for the latter it generally implies no more than the Earldom or Government of that County. Thus whereas your Dr. would have it, that the greateſt Part of *Shropſhire* was given to *Roger de Montgomery*, *Domeſday* only ſays, that he had the City of *Shrewsbury*, *& totam Comitatum*, and the whole County: But that is ſoon explained by what follows, *& totum Dominium quod Rex ipſe tenebat*; where it is plain that by *Dominium* is meant no more than that Power to govern it, and receive a Third Part of the Fines and other Profits to his own Uſe, which King *Edward* had; for otherwiſe the Grant of *totum Comitatum*, had been ſufficient.

B. A. A. p. 92, 93.

M. I confeſs this is more than ever I heard, or conſidered before, concerning this Matter; but you do not give me any poſitive Proof that at the Time when *Domeſday Book* was made, there were any *Engliſhmen* who held Earldoms, or Baronies, or other great Eſtates of the King, or any of his great Men; ſo that what you have ſaid hitherto, tho' it carries a great Shew of Probability, yet is no poſitive Proof againſt the Dr.'s Aſſertion.

F. I ſhall not go about to deny what *William* of *Malmsbury*, and *Henry* of *Huntington* ſo poſitively affirm, that for ſome time before the End of King *William*'s Reign, there was no *Engliſhman* a Biſhop, Abbot, or Earl, in *England*; yet does it not therefore follow, that it was thus through his whole Reign, or if it were ſo, will it therefore follow, that there were few *Engliſhmen* who, when *Domeſday-Book* was made, poſſeſſed any Lands in *England*. But that in Part of King *William*'s Reign there were many *Engliſh* Earls and Barons, appears by above a dozen Charters cited by Sir *William Dugdale*, in the *Saxon* and *Latin* Tongues, in his *Monaſt. Anglic.* which are either directed by King *William* to all his Earls or *Thanes*, or elſe in Latin, *Omnibus Baronibus, Francigenis & Anglis*; or elſe *Omnibus Baronibus & Fidelibus*

& Fidelibus ſuis, Francis & Anglis ſalutem. The like Charters alſo appear of *Hen.* I. and the Empreſs *Maud* his Daughter. So that if *Francigena* and *Francus* ſignify a Frenchman, and *Anglus* an Engliſhman, and if *Fidelis* does (as your Dr. would have it) ſignify a Tenant *in Capite*, then I think nothing is plainer than that there were, for great Part of King *William*'s Reign, both Earls, Barons and Tenants *in Capite* of *Engliſh* Extraction.

But to come to particular Perſons; it will appear by many *Saxon* or *Engliſh* Names in *Doomſday-Book*, as alſo by ſeveral Recitals therein, that there were divers *Engliſh* Noblemen or Gentlemen, who held Lands in divers Counties of *England*, at the Time when that Survey was made. And for Proof of this, ſince ſo ſhort a Converſation as ours will not permit me to run into a long Bed-Roll of Names, I refer you to what the learned and ingenious Mr. *Atwood* in his *Jus Anglorum ab antiquo*, has obſerved out of *Doomſday-Book* upon this Subject; where tho' he has gone over but Fifteen Counties of Thirty, that are ſurveyed in that Book, yet it will thereby ſufficiently appear that your Dr. is much miſtaken when he ſo poſitively affirms, that there were few or no *Engliſhmen* that held Lands in *England*. But to give you a Taſte of this, I ſhall run through as many Counties as Mr. *Atwood* has given us the Names of: To begin which Survey, (where beſides the Earl of *Morton* above-mentioned, who tho' he was a *Norman* born, yet he was here before the Entrance of the *Norman* Duke, and held *Eſtrehaw* in *Tenrige* Hundred in the Time of King *Edward*) there was alſo *Hugo de Port*, an *Engliſhman*, who was a very great Proprietor, as may be found under this Title in *Doomſday-Book*, *Terra Hugonis de Port*. Many Manors he had, as thereby appears; in *Hampſhire* he had at leaſt Two Mannors, *Cerdeford* and *Eſchetune*, from his Anceſtors before King *William*'s Entrance; and beſides this Gentleman, (and the Earl above-mentioned,) there are no leſs than Ten or Eleven, who as it appears either by their *Engliſh* Names, or elſe by this Note which ſo frequently occurs, *Idem tenuit T. R. E.* i. e. *tempore Edwardi Regis*, i. e. held the ſame Lands they and their Anceſtors did in the Time of King *Edward*. The like I may ſay for the other Counties there mentioned, as *Hampſhire* in the next Place, where beſides *Ralph de Mortimer* who had ſeveral Lands, *T. R. E.* there are no leſs than above Thirty Freeholders more, who by their *Saxon* Names and want of Sir-Names, ſeem to be meer *Engliſh*, divers of whom held the ſame Thane-Lands, which themſelves or their Fathers did in the Time of King *Edward*. And tho' in *Buckinghamſhire* and *Berkſhire* indeed there are but Five or Six, who held the ſame Lands which they or their Anceſtors poſſeſſed in the Time of the Conqueror; yet in *Wiltſhire* and *Dorſetſhire*, there appears between Twenty and Thirty *Engliſh* Proprietors, many of whom held whole Townſhips when this Survey was made. In *Somerſetſhire*, *Devonſhire*, *Staffordſhire*, *Yorkſhire* and *Glouceſterſhire*, their does appear in moſt of them a Dozen or more *Engliſh Saxon* Names, who held whole Manors. 'Tis true that in *Nottinghamſhire*, *Lincolnſhire* and *Herefordſhire*, there appear feweſt *Engliſh* Names, and yet the leaſt of theſe have Three a-piece.

So much may ſuffice for *Doomſday Book*: And I doubt not if any one will take the Pains to look over the Titles of the reſt of the Counties, he may find enough Inſtances of the like Nature, ſufficient to prove that the *Engliſh* were not wholly diſpoſſeſſed of their Eſtates, at the latter End of King *William*'s Reign, when this Survey was made. Not to mention *Northumberland*, *Weſtmorland*, and the Biſhoprick of *Durham*; all which are omitted.

But that the Number of *Engliſh*, which held the Lands in the Time of King *William* I. and II. was very conſiderable, may appear by *William* of *Malmsbury*'s relating how the *Norman* Lords then in *England*, would have dethroned *William Ruſus* and have ſet up his Brother *Robert* in his Place, who there alſo ſhews the Manner how that King prevented it. *Rex Videns Normannos penè in una Rabie conſpiratos, Anglos probos, & fortes viros, qui adhuc reſidui erant invitatoriis ſcriptis arceſſit; quibus ſuper injuriis ſuis Querimoniam faciens, bonaſque Leges & Tributorum levamen Liberaſque venationes pollicens, fidelitati ſuæ obligavit*; where *Reſidui* muſt certainly be meant of the Reſidue or Remainder of thoſe *Engliſh* Gentry, whoſe Eſtates were ſtill left; and herein *Ordericus Vitalis* is more expreſs, that King *William* as ſoon as he ſaw the Contrivance againſt him; *Lanfrancum Archiepiſcopum cum Suffraganeis præſulibus, & Comites Angloſque Naturales convocavit, & Conatus Adverſariorum, & velle ſuum expugnandi eos indicavit.*

M. As

M. As for Mr. *Atwood*'s Catalogue of *Engliſh* Names from Doomſday Book, I have not yet examined them; and tho I grant there are, and may be divers who held the ſame Lands that they, or their Fathers did, yet they are but a few in reſpect of the reſt: nor are we certain that all theſe were native *Engliſh*, and not *Normans*, who held thoſe Lands as well then as before the Conqueſt, ſince the *Norman* and the *Engliſh* Names were often the ſame. And as for the want of Sirnames, that is no Argument they muſt needs be *Engliſh*, ſince in thoſe days very few, even of the *Normans*, but Perſons of Quality and Eſtates, had any; as Mr. *Cambden* ſhews us in his Remains. But as for thoſe Expreſſions in the Charters of King *William* and his Sons, wherein the *Engliſh*, as well as the *French* Earls and Barons, are mentioned; thoſe Charters might be made during the three or four firſt years of King *William*'s Reign, when I grant the *Engliſh* were not wholly diſpoſſeſſed of their Eſtates, but that there were ſome of them that ſtill held Earldoms and Baronies in their own Right; but when the ſame Expreſſions occur after that time, the word *Angli*, or *Angligenæ*, muſt be underſtood in another ſenſe, tho it ſeems to be put in oppoſition to *Franci*: for as by theſe laſt are to be underſtood ſuch *French* or *Norman* Barons, who had Eſtates in *England* as well as in *France*; ſo by the former could be only meant ſuch *Frenchmen* or *Normans* who had Eſtates in *England* only, or elſe tho *French* by Original, were *Engliſhmen* by Birth, and are here called *Angli* and *Angligenæ*, to diſtinguiſh them from ſuch *French* Barons as are above-mentioned, or from ſuch as were born in *France*. And for the truth of this, I deſire you would conſult Dr. *B*'s learned Gloſſary, at the end of the Folio Edition of his Anſwer to Mr. *P.* and his two Seconds, *Tit. Angli* and *Angligenæ*; where he tells us, that theſe *Angli* and *Barones Angliæ*, mentioned in theſe Authors and antient Charters, were not *Engliſh* but *Normans*, and thoſe Men of no mean or ordinary Rank, but Earls or Barons; for they could never have met in ſuch numbers, as were requiſite for them to do, to protect and defend King *William Rufus*, had not they been headed by ſuch, if they had either Power or Eſtates left, that depended not upon the *Normans*. And if you, or any Man, can ſhew me an *Engliſh Saxon*, that was then either Earl or Baron, or had any ſhare in the Government, or any that had conſiderable Eſtates that did not hold them of the *Normans*, or had at that time any great Woods, Foreſts, or Privileges of hunting in them, then I will confeſs my ſelf miſtaken. As for *W. Malmesbury*'s ſaying, theſe were *Angli probi qui reſidui erant*, theſe were only the *antiqui & legitimi Barones*, who, as *Ordericus* tells us, came in with his Father, and ſettled themſelves here after the Conqueſt. *B. A. A.*

And as for your Quotations out of *William* of *Malmesbury*, and *Ordericus Vitalis*, concerning the *Engliſh* aſſiſting King *William Rufus* againſt his Brother *Robert*, by uſing the common bait of Liberty, *viz.* promiſing that he would alleviate the rigid Laws of his Father, and give free liberty of hunting in his Foreſts; 'tis true, he thereupon raiſed an indifferent Army, conſiſting chiefly of *Engliſh*, who, as *Matthew Paris* tells us, were no better than mercenary or ſtipendiary Soldiers, and who had either no Eſtates, or elſe had been turned out of them before: ſo that this does not prove that they were *Engliſhmen* of any Fortunes who thus aſſiſted *William Rufus*. *B. A. P.* p. 56.

F. As for what you have now ſaid againſt the Citations of the Names out of Doomſday-Book, it is not material; ſince if *Engliſh* Names were then common to the *Normans* and them, then the *Norman* Names might be as well common to the *Engliſh*; and then many of thoſe in *England*, whom by their Names we ſuppoſe to have been *Normans*, might be native *Engliſhmen*. And as for what you urge againſt the expreſs words of the Charters I have now cited, I think it is a downright wreſting of the words *Francis* and *Anglis*, ſince no Author that I know of but your Doctor is of that Opinion: For that the word *Franci* or *Francigenæ* does ſignify ſuch *Frenchmen* who held Baronies in *England*, is granted on all hands; but how *Angli* muſt alſo ſignify *Frenchmen*, ſeems a Paradox to me: for how could theſe *Frenchmen* or *Normans* be termed *Engliſhmen*, only becauſe they held Eſtates here and not in *Normandy*? For if the having ſuch and ſuch Eſtates in *England* would have turned *Frenchmen* into *Engliſhmen*, there needed no ſuch diſtinction to have been made between *French* and *Engliſh* Barons in theſe Charters; ſince, according to your

Doctor's Notion, the *French* Barons could be no otherwiſe mentioned here, but as they had Eſtates here, and therefore could be only writ to in that Capacity, ſince as mere *Frenchmen* they had nothing to do here: ſo that if this Epithet was in reſpect of the Tenure of their Lands, they would have been ſtiled *Engliſh* Barons as well as the other. Nor is your other Evaſion more to the purpoſe, that by the *Angli* might be meant in the Charters of King *Henry* I. ſuch *Norman* or *French* Barons, who becauſe they were born in *England*, might therefore be called *Engliſh:* for who can believe that in ſo ſmall a time, as from the beginning of the Reign of King *William* I. to that of King *Henry* I. which was but a little above thirty years, ſo many of the *Norman* Nobility were dead, as ſhould make it neceſſary to uſe a new Diſtinction of *French* and *Engliſh* Barons; ſince by their Tenures they were both alike *Engliſh?* And indeed thus to make *Angli* ſignify *Normans*, is to confound and make all words, tho ever ſo plain, uncertain and equivocal. And as for what *Ordericus* ſays of the old *Norman* Barons, it would have ſignified ſomething, if you could have proved he had called them *Engliſhmen*, as he does not: but if you carry it further to the time of the Empreſs *Maud* and King *Stephen*, when all the old Race of *Normans* were certainly dead, then there was much leſs need of this Diſtinction, when all that were born in *England* were *Engliſh* alike; and therefore the word *French* could only extend to thoſe few Barons, who being born in *Normandy*, had Eſtates here.

But ſince you are forced to confeſs, that for the firſt four or five years of King *William* I's Reign, there were both *Engliſh* Earls and Barons, till the King had by degrees rooted them out, there cannot be a better Argument againſt your pretended Right of Conqueſt; ſince it is plain, King *William* could never pretend to take away their Honours and Eſtates as a Conqueror, ſince by his Coronation-Oath he was ſworn to reſtrain all Rapines and unjuſt Judgments, and that he would behave himſelf mercifully toward his Subjects, and treat both the *Engliſh* and *French* with equal Right: ſo that if he afterwards took away the Eſtates of *Engliſh* Nobility or Gentry, it was either becauſe they deſerved it by rebelling againſt him, and then it was juſtly done, or elſe it was done without any cauſe at all, but only to oppreſs and root out the *Engliſh* Proprietors; and if ſo, ſuch Actions being contrary to his own Claim from *Edward* the Confeſſor, as alſo to his Coronation-Oath, could no more give him any ſuch Right to rob or ſpoil Men of their Eſtates without any juſt cauſe, than it could give him a Right to rob the Churches and Monaſteries of all the Plate, Mony, and Jewels which he found in them, even to the very Chalices and Shrines, as *Matthew Paris* and other Authors tell us he did in the fourth year of his Reign; when likewiſe (according as you your ſelf ſet forth) he began to ſhew himſelf a Conqueror, or rather a Tyrant, in thus committing Sacrilege, and taking away the Eſtates of the *Engliſh* without any juſt cauſe.

But however, the Authors of that time do not make ſo great a Tyrant of your Conqueror as the Doctor; for *William* of *Poictou* expreſly tells us, who was Chaplain to this King, concerning his taking away the Eſtates of the *Engliſh*, and giving them to the *Normans*, that *nulli tamen Gallo datum eſt quod Anglo cuiquam injuſtè fuerit ablatum.* And *Ordericus Vitalis*, ſpeaking of his dealing with the *Engliſh* at the beginning of his Reign, ſays expreſly, *Neminem, niſi quem non damnare iniquum foret, damnavit.*

p. 208.

Lib. IV. pag. 505, 506.

I ſhall now conclude with a Reply to what you have ſaid, to evade the Authorities of thoſe antient Authors I have brought to prove, that in the beginning of the Reign of King *William* the Second, there were many *Engliſh* Gentlemen left of conſiderable Eſtates, whom you and your Doctor would fain make to be no better than mere Mercenaries; which is expreſly contrary to the Authority of *Matthew Paris*, whom you your ſelf have cited in this Point, as alſo all other Authors who have wrote of this matter: for *Matthew* has immediately before theſe words, *Videns igitur Rex Willielmus, omnes penè Regni proceres unâ rabie conſpiratos, Anglos fortitudine & probitate inſignes, faciles leges & tributorum levamen, illis venationes liberaſque promittendo ſibi primò devinxit*; and almoſt makes uſe of the very words that *Malmesbury* had done before. Now I deſire you or your Doctor would ſatisfy me, how Men, who were remarkable for their Valour and Honeſty, and who were ſo conſiderable, as to be ſent for by Letters writ on purpoſe, and when they came, ſhould be promiſed

miſed eaſier Laws, free Hunting, and a Relaxation of Taxes, all which are Privileges belonging to Men of Eſtates, could be mere Soldiers of Fortune? And to make it plain that they were not the King's, but their own Woods they were to hunt in, *Roger Hoveden* ſpeaking of this very matter, tells us, *Et conceſſit omnibus ſylvas ſuas, & venationem: Sed quicquid promiſit parvo tempore cuſtodivit, Angli tum fideliter eum juvabant.* But that he did not keep his Promiſe as to hunting, as well as other things, appears by a Paſſage in *Eadmerus*, where he gives us as an Example of King *Ruſus*'s harſh Nature, "That about fifty "Men of the antient *Engliſh* Gentry, who in thoſe days enjoyed ſome Re"mains of Riches, were taken and accuſed, that they had killed the King's "Deer;" and having for this undergone the Trial of Fire and Water, he was in a great Rage about it: which is ſufficient to ſhew you, that there were at this time many *Engliſh* Gentlemen left of ſufficient Eſtates to uſe Hunting, either in their own or the King's Woods. As for what you urge further againſt Mr. *A*'s Inſtances out of Doomſday Book, it is not conſiderable; ſince it is only an Exception againſt the Names of Perſons there mentioned, that they were not native *Engliſh*, but *Normans*, who either were born, or had Lands in *England*, or elſe had the ſame Names with the *Engliſh*; both which are *gratis dicta*: for Doomſday-Book plainly ſays, either that they or their Anceſtors were here before your Conqueſt, or elſe their Names being wholly *Engliſh-Saxon*, it lies upon your ſide to prove, that they were *Frenchmen* or *Normans* by Original, which I believe is more than you or your Doctor is able to do.

F. I cannot blame you if you do what you can to evade this Teſtimony from *Sharnborn*'s Book, which gives ſo exact an account of the Original of thoſe Tenants who held of the King, as Sir *H. Spelman* tells us, *per ſervitium Drengarii*; and ſuch Tenants were called *Drenches* or *Drenges*, as this Book of *Sharnborn* tells us. But tho it is true, as this Book it ſelf ſets forth, *Edwin* of *Sharnborn* was never reſtored to all the Lands he held before the Conqueſt; yet it is plain, that he had the King's Mandate for his Reſtitution: and if he could not obtain it, by reaſon of the great power of the preſent Poſſeſſors, yet that is no Argument againſt his Right, or King *William*'s Intention to reſtore him; ſince *Ingulph* tells us, that *Ivo Talbois* ſeized the Cell of *Spalding*, and divers Lands belonging to the Monaſtery of *Croyland*, and kept them by force, notwithſtanding a ſolemn Hearing before the King and Council. And if a great Man could do this with the Lands of the Church, it is no wonder that ſo powerful a Perſon as Earl *Warren* could, by his Power, or perhaps by the Connivance of King *William* himſelf, keep another Man's Eſtate, and make him contented with ſuch a ſhare as he would allow him, when he found he could have no other remedy againſt thoſe that thus unjuſtly detained it.

Gloſſary, Title *Drenches*.

Hiſt. p. 71, 72, 95. Edit. Oxon.

But tho in the beginning of your Diſcourſe you ſeem to allow a part of the Story, as it is related in *Sharnborn*'s Manuſcript, and produce the Teſtimony of *Bracton* and *Fleta*, to prove that divers antient *Engliſh* Proprietors, who being thrown out of their Eſtates by powerful Men preſently after the Conqueſt, were fain to take them again upon performing of Villain Services, tho they themſelves remained free Men; yet your Doctor, from whom you borrow this, is very much out in his Application of thoſe Paſſages he cites: for neither of thoſe Authors do affirm this of all Owners of Lands whatſoever, but only there to give us the Original of Socage-Tenants on the King's Demeſnes, as appears by *Bracton*'s Title to that Chapter, from whence the Doctor cites this Paſſage, which is, *De diverſis conditionibus perſonarum tenentium in Dominicis Domini Regis.* And the firſt words of this Chapter make it yet plainer, beginning thus, *In Dominico Domini Regis plura ſunt genera hominum, ſunt enim ibi ſervi ſive nativi, ante Conqueſtum, in Conqueſtu, & poſt Conqueſtum*; and under theſe laſt ranges the Perſons you mentioned. But *Fleta* is more exact in his Chapter *de Sokemannis*, where he tells us, that theſe Men were Tenants of the King's antient Mannors in Demeſne; *Et quia hujuſmodi cultores Regis dignoſcuntur, proviſa fuit quies, ne ſectas facerent ad Comitatum, vel Hundredum tamen pro terra, quorum congregationem tunc ſocam appellarunt, hinc eſt quod Sokemanni hodie dicuntur eſſe.* So that tho King *William* might permit his antient Tenants to be thus outed out of the Eſtates they held in his own Demeſnes, yet does it not therefore follow, that he took away the Eſtates of

the antient Owners all over *England*, of whatsoever Tenure they were, or of whomsoever held. But as for your Quotation out of *Matthew Paris*, it proves no more than what I readily grant, that King *William*, after his return out of *Normandy*, liberally rewarded his Followers with the Estates of the *English*, which might be only of such as fought against him at the Battle of *Hastings*; and as for that little which was left them, which he says was put under the Yoke of a perpetual Servitude, he means no more by this Expression, than that new Tenure of Knight's Service which King *William* imposed upon them; as this Author in the very next Leaf observes, where he speaks of the Lands of the Bishopricks and Abbies, which were held before free from all secular Servitude, *sub servitute statuit militari*.

M. I will not undertake to prove that he quite altered the antient Laws of *England*, and brought in quite new ones; yet that he did so in great part, and that by his sole Authority, I think I can prove by sufficient Testimonies: and therefore I shall begin with that of *Eadmer*, a Monk of *Canterbury*, a Companion of Archbishop *Lanfranc*'s, who tells us in his History, "That *William* "designing to establish in *England* those Usages and Laws, which his Ancestors and he observed in *Normandy*, made such Persons Bishops, Abbots, and "other principal Men, thro the whole Nation, who could not be thought so "unworthy as to be guilty of any Reluctancy and Disobedience to them, "knowing by whom, and to what they were raised; all divine and human "things he ordered at his pleasure." And after the Historian hath recounted in what things he disallowed the Authority of the Pope and Archbishop, he concludes thus: "But what he did in Secular Matters, I forbear to write, be-"cause it is not my purpose, and because also any one may, from what hath "been delivered, guess what he did in Seculars." From which I think nothing is plainer, than that King *William* did not only design to alter many things in the Laws and Customs of *England*, but did also actually do it; for to what end else did he make the Bishops, Abbots, and other principal Men, who were to be Judges in all Courts? Now that King *William* governed the Nation as Conqueror, and did so live and repute himself so to be, and as such brought in and imposed new Laws upon the People of this Nation, is clear, as I shall prove from these Particulars.

Hist. Nov. fol. 6. n. 10, 20, 30. *B. A. P.* p. 32.

First, The Justiciaries, or chief Justices, the Chancellors, the Lawyers, the Ministerial Officers and Under-Judges, Earls, Sheriffs, Bailiffs, Hundredaries, were all *Normans*, from his first coming until above a hundred years after; as I can make it out by particular Instances and undeniable Reasons, were not the Catalogues too long to be here inserted. If therefore the Justiciaries, Chancellors, Earls, Sheriffs, Lords of Mannors, such as heard Causes, and gave Judgment, were *Normans*; if the Lawyers and Pleaders were also *Normans*, the Pleadings and Judgments in their several Courts must of necessity have been in that Language, and the Law also, I mean the *Norman* Law: otherwise they had said and done they knew not what, and judged they knew not how; especially when the Controversies were to be determined by military Men, as Earls, Sheriffs, Lords of Mannors, *&c.* that understood not the *English* Tongue or Law; or when the Chief Justiciary himself was a military Man, as it often happened, and understood only the *Norman* Language: and 'tis hardly to be believed these Men would give themselves the trouble of learning and understanding the *English* Law and Language.

Secondly, Tho we have many Laws and Customs from the *Northern* People, and *North* Parts of *Germany*, from whence both *Saxons* and *Normans* came; yet, after the Conquest, the Bulk and Main of our Laws were brought hither from *Normandy* by the Conqueror, from whence we received the Tenures and Manner of holding our Estates in every respect, from whence also we have received the Customs incident to those Estates, and likewise the Quality of them, being most of them feudal, and enjoyed under several military Conditions and Services; so that of necessary consequence from thence we must receive the Laws also, by which these Tenures, and the Customs incident to them, were regulated, and by which every Man's Right in such Estates was secured, according to the nature of them. From *Normandy* (and brought in by the Conqueror) we received most, if not all our antient Tenures, and manner of holding and enjoying our Lands and Estates, as will appear by comparing our antient Tenures with theirs.

F. I shall not deny but a great part of the matter of Fact is true, as you have now put it: yet tho I grant, that the Bishops, Abbots, Chancellors, chief Justices, and other great Officers of the Crown, were all, or the greatest part of them *Normans*, during the Reigns of the two first Kings of the *Norman* Race; it does not therefore follow, that these Men must have made a Change in the very substance of our Laws, tho in matters of Pleading, or judicial Proceedings, they might have introduc'd a great many Alterations: yet as to the Civil or Municipal Laws of this Kingdom, concerning the Descent and Conveyance of Estates, they continued the same after the coming in of the *Normans*: and tho Lands held by Knights Service, descended to the eldest Son; yet Lands in free Socage, and Gavel-kind, to all the Sons alike, as they had likewise done before your Conquest. There were also Estates Tail and Feesimple, as now; and there were also the like Customs of the Courtesy of *England*, Borough *English*, &c. as there are also at this day, as I can prove to you by several passages out of our *English Saxon* Laws. So likewise for Conveyance of Estates, those of the better sort of People call'd *Bockland*, were conveyed by Deeds, with Livery and Seisin, either with or without Warranty, as they are now; but that which was call'd *Folcland*, held by the meaner sort, were only by Livery and Seisin without any Writing. And tho I grant that the Custom of sealing of Deeds is deriv'd from the *Normans*, yet that is an alteration only in matter of Form; and as for Goods and Mony they were bequeathable by a Man's last Will, as well after, as before your Conquest. And if you can have the opportunity to peruse a Manuscript Treatise of Sir *Roger Owen*'s upon this Subject, you will find it there sufficiently proved; That Livery of Seisin, Licences, or Fines for Alienation, Daughters to inherit, Trials by Juries, Abjurations, Utlaries, Coroners, disposing of Lands by Will, Escheats, Goals, Writs, Wrecks, Warranties, Felons Goods, and many other parts of our Law, were here in being, long before the time of King *William*. This being so as to the Common-Law, let us see what alterations there were made in the Criminal, or Crown-part of the Law. First, as to Treason and wilful Murder, they were punished with Death in the *Saxon* Times, as well as after; as were also Robbery and Burglary in the Night-time: but as for lesser Offences, such as Batteries, Maims, Robberies, and other Breaches of the Peace, they were punish'd by Fine, as well before the Conquest as after: And as for the Law of *Englesherie*, which was, that if a Man were found murdered, it should be presumed he was an Alien or *Frenchman*, and the Town thereupon where the Body was found was to be fined, unless *Englesherie* was proved, *i. e.* that the Person was an *Englishman*; this Custom, tho it lasted to the Reign of *Edward* III. when it was taken away by a Statute made on purpose, tho it may seem a Badge of the *Norman* Conquest; yet was it indeed a Law first introduc'd by King *Knute* in behalf of his *Danes*, who being often found kill'd, and none could tell by whom, he obtain'd this Law to be made to prevent it; as you will see at large in *Bracton*, and the Mirror of Justices. But as for Trial of all Offences, it was either by Juries, Fire, or Water Ordeal; or else by Witnesses, or Compurgators upon Oath, as well before as after King *William*'s entrance. So that I can find nothing material as to the alterations of the Laws, either in matters Criminal or Civil, from what they were in the *Saxons* time; and this being so, it is easily answer'd, how the Judges and Officers might be *Normans*, and yet the Laws continue *English* still: for first it is certain, that for four or five Years, in the beginning of King *William*'s Reign, he made no great alteration in the Judges, and other great Officers of the Kingdom; and by that time those whom he was afterwards pleas'd to employ in the rooms of such as either died or were turned out, might very well come to understand the Laws of *England*, as far as they differ'd from those of *Normandy*, which was not in many Particulars; since, as your self very well observ'd, the *Saxons* and *Normans* being both Northern People, had many of the same Laws and Customs common to both, and the same Persons might in three or four Years time have very well learn'd *English* enough to understand the Evidence that the Witnesses gave before them, without any Interpreter.

Glanville, Lib. 7. cap. 2.

But, say you, all the Pleadings and Judgments were in *French*, and therefore the Lawyers and Pleaders must be *Frenchmen*; this is likewise a false Consequence:

Consequence: for pray tell me, why might not the *English* Lawyers have learnt *French* enough to plead in three or four Years time, which must necessarily be required before so great an Alteration could be made, or Lawyers enough be brought out of *Normandy*, and sufficiently instructed in our Laws and Customs, could be fitted for their Employments? Again, supposing all Pleadings and other Proceedings to have been in *French*, it does not follow that this Practice could have obtained in all the Courts of *England*: for tho I grant it so in the Kings Courts at *Westminster*, where the Judges (as you say) were for the most part *Frenchmen*, or *Normans*; yet this could only affect either that great Court, the *Curia Regis*, where the King often sat in Person, together with his Chief Justiciary, and other Justices; or else the Court of Common-Pleas, which followed the King's Court, till it was ordain'd otherwise by *Magna Charta*; or else the Court of Exchequer, where in those days only matters concerning the King's Debts, Lands, and Revenues were chiefly heard and dispatched. But as for the Court of Chancery, it was not then used as a Court of Equity, nor long after, till the Reigns of *Henry* IV, V, and VI. when it arose by degrees, as you will find at large in Sir *William Dugdale*'s *Origines Juridiciales*.

Vid. *Coke* Proem.

So that granting all the Proceedings in these Supreme Courts to have been in *French*, because the King himself, who sat there with the Chief Justice, and the rest of the Judges, were either *Normans* or *Frenchmen*; yet was this of no great Importance, in comparison of the more numerous Suits and Causes which were first begun, and try'd in the inferior Courts in the Country, before ever they could be brought up to *London*, by Writ of Error, or Appeal; which could only be in Causes of great moment, or between the King's Tenants *in Capite*: So now to let you see that what I say is true, we will survey all the inferior Courts of that time, beginning with the lowest, and going up to the highest of them. The first Court we find of this kind, was that of the free Borough or Tything, wherein by the Laws of King *Edward* the Confessor, the Tythingman or Headborough was the Judge; who, as that Law tells us, determin'd all Suits and Differences arising among Neighbours of the same Tything, concerning petty Trespasses and Injuries, which if they could not be there determin'd, might then be brought before the Court-Baron, which was incident to every Mannor, and wherein the Suitors, and not the Lord nor his Steward, were the Judges: And this, as Sir *Edward Coke* tells us, was first instituted for the ease of the Tenants, and for the ending of Debts and Damages under forty Shillings at home, as it were at their own doors: And let me tell you by the way, that forty Shillings was then near as much as forty Pound is now. And if the Business could not be ended here, or was of too high a nature, it was then brought into the Hundred-Court, where the Hundreder together with the Suitors were Judges; and if they had not Justice there, they might then remove it into the Court of Tything or Lathe, which was not the smaller Court of the Tything mention'd, nor yet the Court-Leet, but a particular Court consisting of three or four Hundreds; which, tho now quite lost, was in being at the time of the Statute of *Merton*, as I shall shew you by and by: And if the Business could not be decided in the Tything, it was then removed to the Shire, or County-Court, as Mr. *Lambert* shews us from the Laws of King *Edward*; which was then held (as now) from Month to Month, and in which, as well as in the Hundred-Court, the Suitors alone were Judges. And tho it can now only hold Pleas (unless it be by Writ of Justices) of any Debt or Damage to the value of forty Shillings, or above; yet we find from antient Authors, that this Court was so considerable, that we have divers Examples of Causes between the greatest Persons of *England*, and that for Lands of considerable Value, begun and determin'd in this Court. Thus *Eadmerus* relates the great Trial at *Pinnenden-heath*, between *Odo* Bishop of *Bayeux*, half Brother to your Conqueror, and by him created Earl of *Kent*, and *Lanfrank* Archbishop of *Canterbury*, concerning divers Mannors in *Kent*, and other Counties, whereof Earl *Odo* had disseized the See of *Canterbury*, in the time of Archbishop *Stigand* his Predecessor: whereupon the Archbishop petition'd the King, that Justice might be done him, *secundum Legem Terræ*, and the King thereupon sends forth a Writ to summon a County-Court: The Debate lasted three Days, before the Freemen of the County of *Kent*, in the presence of many

Vid. *Spelman's Gloss. Tit.* Fribargus.

Vid. 4. *Inst.* cap. 55,56,57.

Vid. *Spelman's Gloss. Tit.* Hundredus & Comitatus.

Vid. Hist. *Ead.* Lib. pag. 8, 9.

many chief Men, Biſhops and Lords, and others skilful in the Laws; and Judgment paſſed for the Archbiſhop *Lanfranc* by the Votes of the Freemen; or *primorum*, or *proborum hominum*, as the Hiſtorian calls them.

So that to conclude this Head, if no Suit could be begun in thoſe Days, but what was firſt commenc'd in the Hundred-Court; no *Diſtringas* could iſſue forth till three Demands were made in the Hundred, and from thence to be remov'd to the County-Court, where regularly all Civil Cauſes were try'd by the Suitors as the only Judges, as well as in the Hundred-Court, and Court-Baron: then it will neceſſarily follow, that, unleſs you can prove, (which I think is impoſſible) that all the *Engliſh* were at that time Slaves and Villains, and had no Freehold of any ſort left them; I ſay, it will follow that all Pleadings and Proceedings in any of thoſe Courts, being before mere *Engliſhmen*, muſt have been in *Engliſh*, and no other Language. So that after all this great Cry, not a twentieth part of the Suits in *England*, were brought to *London*: And as for Criminal Cauſes, unleſs in Caſes of Treaſon, all Murders, and other Felonies were try'd and judg'd in the Country; either within the particular Juriſdictions of Biſhops, Abbots or great Lords, or elſe of ſuch Cities and Towns who had the Privileges of *Infangthief* and *Outfangthief*, together with *Foſſa* and *Furca*; that is, a Pit to drown, and a Gallows to hang Malefactors: and if the Offence was done in the Body of the County, they were then try'd and condemn'd in the County-Court; Juſtices *Itinerant* not being in uſe till *Henry* II's Reign.

M. I muſt confeſs you have given me a great deal of Light in theſe matters, more than I had before: but as I ſhall not diſpute whether in the loweſt Courts, ſuch as the Tythings and Court-Barons, the ſmaller *Engliſh* Freeholders might not judge of petty Cauſes amongſt themſelves; yet in thoſe greater Cauſes, brought in the Hundred, and County-Courts, only the greater Freemen of the Hundred, or County, were Judges. Who theſe Freemen were, Dr. *B.* hath ſufficiently taught us in his Comments upon the Conqueror's Laws, as alſo in his *Gloſſary*, *viz.* That they were Tenants in Military Service, who in thoſe times were the only great Freemen of the Kingdom, and quite different from our ordinary Freeholders at this day. Theſe were the Men, the only Legal Men, that named and choſe Juries; and ſerv'd on Juries themſelves, both in the County and Hundred-Courts, and diſpatch'd all Country Buſineſs under the great Officers. I do not deny but that there might be other leſſer Freemen in thoſe Times; but what their Quality was, farther than that their Perſons and Blood were free; (that is, they were not *Nativi*, or Bondmen) it will give a knowing Man trouble to diſcover it to us. We find in every Leaf of *Doomſday*, *Socmen & liberi homines*, Poſſeſſors of ſmall Parcels of Land; but what their Quality was, and of what Intereſt in the Nation, *Dicat Apollo*, no Man yet hath made it out, nor can it be done by the account we have of ordinary Freemen, for a Century or two laſt paſt.

B. A. P. pag. 38, 39. *Gloſ.* *Gloſ.* pag. 29, 30.

And for further Proof of this, That none but Tenants in *Capite*, or Military Tenants at leaſt, could be Judges in the County-Court, it appears by the Laws of King *Henry* I. wherein it is expreſly ſaid: *Regis Judices Barones Comitatus qui liberas in eis terras habent, per quos debent cauſæ ſingulorum alterna proſecutione tractari, &c.* So that theſe Barons of the County being certainly feudal Tenants, this Service of being Suitors to the County and Hundred-Courts, was a Service incident to their Tenures; and then it will alſo follow, that thoſe *Primores*, and *Probi Viri*, who as you have now related, try'd this Cauſe between Earl *Odo*, and Archbiſhop *Lanfranc*; and who (let me tell you) were not only of the County of *Kent*, but of other Counties in *England*, where the Mannors and Lands lay, as *Eadmerus* ſhews us; and who were the Jurors in this great Cauſe, conſiſted of the great Military Tenants, that were not Barons, and the leſs which were the *Probi Viri:* for it can be no ways probable, that the ordinary Freemen who made the greateſt Number, and were all bound to their good Behaviour, could be the *Probi & legales homines*, who ſerv'd upon Juries. To conclude, if I have already prov'd, that King *William* took away the greateſt part of the Lands of *England*, and gave them to *Normans* and *Frenchmen*, who were the only true Freemen or Freeholders of the Kingdom; and as ſuch owed Suit and Service to the Hundred and County-Court, in which (as you your ſelf ſet forth) all the conſiderable Actions as well Real as Perſonal were then commenc'd and try'd; it will alſo follow, that the

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B. J. A. p. 36.

Suitors,

Suitors, who were the Judges in those Courts, being for the greatest part at least *Frenchmen*, all the Trials and Proceedings therein must have been in *French*, and not in *English*, which is contrary to what you have undertaken to prove.

F. If this be all you have to object against what I have now said, that all Pleadings in the inferior Courts in the Country, must in the time of your Conqueror have been in *French*, and not in *English*; I hope I shall give you very good Satisfaction to the contrary, and shall prove to you, that the very same Persons who were the Suitors or Judges in the Hundred-Court, were also Suitors in that of the County, tho they were of ever so small Estates of Freehold: and that those who were thus Judges in the Hundred-Court, were also the same Persons of which the lowest Court, *viz.* that of the Headborough or Tythingman, did consist, appears by the very Definition of a Hundred; as you may see it in Sir *H. Spelman*'s *Glossary*, *Est autem Hundredus portio Comitatus, quâ olim degebant centum pacis regiæ Fidejussores, uti Decuria quâ decem, complexus est igitur Hundredus decem Decurias, ut centenarius numerus decies denarium.* Now that the County-Court consisted of the same sort of Persons with that of the Hundred, is also certain, since all *England* was then (as now) divided into Counties, Hundreds, and Tythings: so that as the Hundred-Court consisted of a hundred Persons, who had all given Pledges to the King, so did the County-Court consist of all the Freeholders or Freemen of the several Hundreds of the County, who all owed Suit and Service to the County-Court; and as such were returnable upon Juries in all Trials in that Court, tho they had ever so small Estates of Freehold; for then there were no Laws that limited the Estates of Freeholders returnable to Juries, upon Assizes or Trials, to the yearly value of forty Shillings. But that these Suitors to the Hundred-Court, must have been for the most part *English* in all your Conqueror's Reign, your Doctor has given us a sufficient Testimony in his Answer to Mr. *A*'s *Janus Anglorum*, p. 35. where he tells us, the Jurors were antiently call'd *Testes*, and often in *Doomsday-Book* it is thus found; "*Testatur Hundredus, Teste Hundredâ*, the "Hundred witnesseth, that such Land is such a Man's; or by the witness of "the Hundred such Land is such a Man's." See the Claims in *Yorkshire*, *Lincolnshire*, and *Suffolk*, at the end of that Book. Now the use that I shall make of these words of the Doctors, is this: That in many of these Claims the Issue is, that such a one held the Land, *die quo Rex Edwardus fuit vivus & mortuus*. Now I desire you to tell me, if the Freeholders of the Hundred were all Strangers and *Normans* at this time, as your Doctor supposes they all were that serv'd on Juries in the Hundred and County-Court; how these Men could testify who held the Land at the time of King *Edward*'s Death, and by what Services? And I desire you to be pleased to read and consider the Trial mention'd in Doomsday-Book, between *Will. de Chornet*, and *Picot* the Sheriff, where the Proof was by the best and most antient Men of the whole County and Hundred, that this Land in question belong'd to *Chornet per hæreditatem sui Antecessoris*. So that then the best and antientest Freeholders of the County of *Berks*, were the same who were so in the time of King *Edward*, or else how could they witness this Land to have been held by *Chornet*'s Ancestor?

Tit. Hundredus.

Cap. 38.

J. A. A. pag. 95, 201.

But because you have two or three small Objections against this Truth, I shall endeavour to remove them. The first is, that those who try'd one another's Causes in the County-Court, are in the Law of King *Henry* I. (which you now cited) call'd *Barones Comitatus qui liberas Terras habent*. Therefore you imagine that these *Barones Comitatus* must needs have been all Tenants *in Capite*, or by Knights Service at least, who by virtue of that Tenure ow'd Suit and Service to the County-Court: which is a great mistake; since every Freeholder of whatsoever Tenure, who was resident within the County, owed Suit and Service to that Court, and it was the twentieth of *Henry* VI. which limited that Service only to Freeholders of forty Shillings *per annum*, or above. Now that every Freeholder, tho of ever so small Estate, was antiently a Baron of the County; is also as certain in the antient and larger Acceptation of the word Baron, which did not originally signify only a Tenant *in Capite*, or by Knight Service, but any other Freeholder, who could be return'd upon a Jury concerning Freehold in the County-Court. Now that every Lord of a Manor, and Freeholder, was antiently call'd a Thane before the Conquest, appears by this Law of King *Knute*'s, *Et habet omnis dominus familiam suam in placito suo*;

Cap. 52.

ſuo; & ſi accuſetur in aliquo, reſpondeat in Hundredo, ubi compellabitur ſicut recta Lex ſit. Quod ſi accuſetur, & fugiat, reddat Dominus ejus Regi Weram, i. e. pretium nativitatis hominis illius; & ſi Dominus accuſetur, quod ejus conſilio fugerit, adlegiet ſe cum quinque Thanis, (id eſt Nobilibus) & idem ſit ſextus, ſi purgatio frangat ei, reddat ei (ſcil. Regi) Weram ſuam, & qui fugerit, extra legem habeatur. I ſhall not trouble my ſelf to tranſlate this Law, ſince the *Latin* is plain enough; only take notice that by this word *adlegiet*, is meant he ſhall wage Law, or make Oath together with five Thanes, that is Noblemen or Gentlemen, *& idem ſit ſextus*, whereof he himſelf ſhould be the ſixth: where you may ſee that every Freeholder, being Maſter of a Family, is here called a Thane, who was to give Pledge or Security, that all his Family ſhould anſwer the Law in the Hundred-Court for any Offence they ſhould commit; and theſe Thanes were ſuch as Mr. *Lambert* expreſſes by *Aſcitis ſibi ingenuis quinque:* for what he calls *ingenuus*, *Brompton* calls *liber homo*, that is, every Freeholder. So that you ſee Thane, *ingenuus*, and *liber homo*, ſignify all the ſame thing; that is, the lower ſort of Thane, or Freeholders who owed Suit and Service to the Hundred and County-Courts. And that theſe very Men were ſuch as after your Conqueſt were call'd *Barones Comitatus*, appears in this, that thoſe who before the Conqueſt were call'd Thanes, are afterwards call'd Barons of Counties, in all our antient Laws and Charters: and for this I ſhall give you the Authority of Sir *H. Spelman* in his *Gloſſary*, who tho he does chiefly underſtand by this word all ſort of feudal Barons dwelling in each County, *Proceres nempe & Maneriorum domini*; yet not only theſe, but *necnon liberi quique Tenentes, hoc eſt fundorum proprietarii, Anglicè* Freeholders, *ut ſuperius dictum eſt.* So that take it in which Senſe you will, this word cannot ſignify only Tenants *in Capite*, or ſo much as Military Tenants, as you ſuppoſe; ſince a Man might hold a Mannor by other Tenures than Knights Service, as by grand or petty Serjeanty, or in Socage by a certain Rent; and ſo likewiſe might he hold any other leſſer Eſtate of Freehold by the like Tenures: which if it were ſo, your Doctor's fancy of Tenants in Military Service being then the only Freemen of the Kingdom, and who were capable of ſerving upon Juries in the Hundred and County-Court, is a mere Chimera, without any ground, as I have already proved at our third Meeting; when I ſhew'd you by the words *liberi homines*, ſo often mention'd in King *William*'s Laws, are to be underſtood not only Tenants by Knights-Service, but any other Freemen or Freeholders, who held Lands or other Poſſeſſions: which may be alſo proved farther by the Statute of *Merton*, *cap.* 10. as appears by this Clauſe; *Proviſum eſt inſuper, quod quilibet liber homo qui ſectam debet ad Comitatum, Tithingum, Hundredum, & Wapentagium, vel ad Curiam Domini ſui, libere poſſit facere Attornatum ſuum, ad ſectas illas pro eo faciendas.* Whereby you may ſee, that every Freeman, who was a Maſter of a Family, and not under the power of another, was then oblig'd to pay Suit and Service to the County, Tything and Hundred-Courts.

J. A. A. p. 197. Lamb. leges Ethelredi. Cap. 1.

Tit. Barones Comitatus.

But ſay you, theſe Perſons who were Jurors in this great Cauſe between Earl *Odo* and Archbiſhop *Lanfranc*, are there call'd *Primores*, and *Probi Viri*, not only of the County of *Kent*, but other Counties where the Lands lay; and it is not probable that the ordinary Freemen, who made the greateſt number, and were all bound to their good Behaviour, could be the *Probi & Legales Homines*, who ſerv'd upon this Jury: Well, I grant it, that theſe Gentlemen you ſpeak of, might be Lords of Mannors, and conſiderable for Quality and Eſtate, and who alone were impannelled upon Juries in this, and other ſuch great Trials of Novel Diſſeiſin; and yet for all that, thoſe leſſer Freemen, or Freeholders you mention, were *Legales Homines*, and as ſuch were capable of trying all Cauſes, of what nature ſoever; ſince Sir *H. Spelman* tells us in his *Gloſſary*, Title *Legalis*, That *in Jure noſtro de eo dicitur qui ſtat rectus in Curia, non exlex ſeu utlegatus, non excommunicatus, vel infamis, &c. ſed qui & in lege poſtulat & poſtuletur. Hoc ſenſu vulgare illud in formulis juridicis, probi & legales homines.* So that he does not make (as you do) that a Man's Legality muſt depend upon his Tenure, but upon his being *rectus in Curia.* So that 'tis no more an Argument, that becauſe in ſome great Trials in thoſe Times, none but the chief and moſt conſiderable Men in the County were impannel'd upon Juries in the County-Court, therefore none but they could ever ſerve there upon Juries at all; than it would be now for a Man to affirm, that becauſe in great Trials at the Aſ-

ſizes, or at the Bar at *Weſtminſter*, only Knights and Gentlemen are impannel'd, therefore none but they, and not any Yeomen, or Countrymen can ever ſerve upon Juries at all.

But let theſe Gentlemen you mention have been all Tenants *in Capite*, or by Knights-Service, if you pleaſe, yet will it not make good your Aſſertion, that they were only *Normans* or *Frenchmen*; who as the only Proprietors of Eſtates, ſerv'd upon this and other Juries at that time: for they muſt have certainly been ſuch, who of their own knowledge knew the Lands in queſtion, and to whom they did belong before King *William*'s entrance into *England*. And your Doctor himſelf in his anſwer to Mr. *Atwood*'s *Janus*, fully agrees to this Truth, as appears by this Paſſage, which I deſire you would read. "In Trials of Novel "Diſſeiſin, and for the Poſſeſſion of Lands, Cuſtoms, Services, *&c.* the Juries "at the time of the Conqueſt, and in ſeveral of the Kings Reigns next ſuc- "ceeding, were impannel'd out of the ſame Town and Neighbourhood, of "ſuch as did know the Land and things in queſtion, and who had been poſſeſſed "of it, and for what time. And to this purpoſe in an Aſſize, if none of the "Jurors knew the right it ſelf, or truth of the matter, and did teſtify ſo much "to the Court upon Oath, recourſe was then had to others, until ſuch were "found who did khow the Truth; but if ſome did know the Truth, and others "not, thoſe that knew it not were put by, and others call'd into the Court, "until twelve at the leaſt ſhould be found to agree therein: and for this pur- "poſe it was that all Suitors to Hundred and County-Courts were bound to ap- "pear there under great Penalties, that there might be a Jury of ſuch as knew "whoſe the Land was:" And ſo far your Doctor is very much in the right. But then, that all the Gentlemen that ſerv'd upon this Jury muſt be *Engliſhmen*, is as plain from the Reaſon he hath now given us: and if he had not told us ſo, we have an undeniable Authority for it; to wit, the antient MS. call'd *Codex Roffenſis*, quoted by Mr. *Selden* in his Notes upon *Eadmerus*; where ſpeaking of this Trial, *Præcepit Rex Comitatum totum* (*viz.* of *Kent*) *abſque morâ conſidere, & homines Comitatus omnes Francigenas, & præcipue Anglos in antiquis legibus & conſuetudinibus peritos, in unum convenire.* But it alſo adds, *& alii aliorum Comitatum homines*, and ſo confirms what *Eadmerus* ſays. So that nothing is more evident by your Doctor's own ſhewing, as alſo by the Teſtimony of this antient Author; than that this great Cauſe was try'd either by Tenants *in Capite*, and other great Freeholders who were all *Engliſhmen*, or ſuch *Frenchmen* as were here before your Conqueſt. So that from this famous Trial we may draw two or three Concluſions directly contrary to your Aſſertions. Firſt, That there were many great Proprietors not only in *Kent*, but in other Counties, as appears by *Eadmerus*, who were a ſufficient number to try Cauſes in the County-Courts, a good while after your Conqueror's coming over. Secondly, That the Pleadings and Verdict in this Cauſe being before *Engliſhmen*, and given by them, muſt have been all in *Engliſh*; and if it were ſo in this Cauſe, it will follow for the ſame reaſon in all other Counties all over *England*. Laſtly, That theſe Gentlemen were well skill'd in the antient Laws and Cuſtoms of *England*, which had been in vain if they had been alter'd as you ſuppoſe.

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M. I will not deny but that in the beginning of the Conqueror's Reign, many *Engliſhmen* might have Eſtates left them, which might not be taken away till ſome Years after; and Mr. *Selden* in his Titles of Honour, places this Trial between Earl *Odo* and Archbiſhop *Lanfranc*, about the firſt Year of King *William*, and I ſuppoſe that it happen'd before the fifth Year of his Reign; when *Matthew Paris* tells us, "That the Earls *Eadwin*, *Morcar* and *Siward*, toge- "ther with *Egelwin* Biſhop of *Durham*, as alſo many thouſands of Clerks and "Laicks, not being able to bear the Severity of King *William*, fled into woody "and deſart places, and from thence got into the Iſle of *Ely*, where they "fortify'd themſelves; and whither King *William* follow'd them, and taking "the Iſland made them ſubmit to Mercy." And then this Author tells us, that the King put the Biſhop of *Durham* in Priſon; and as for the reſt, ſome of them he kill'd, ſome he put to ranſom, and others he committed to perpetual Impriſonment: ſo that I reckon from this time, the King took away moſt of the *Engliſhmens* Eſtates, as not truſting them any more.

F. If this had all happen'd as you have put it, yet would it not prove what you have maintain'd: for if thoſe *Engliſhmen* who had not been engag'd with

with *Harold*, or else had been pardon'd for it, still held their Estates, and as you say forfeited them afterwards for Rebellion; then it is certain King *William* did not proceed against the *English* as a Conqueror: since if he had, he would have taken away their Estates *Jure belli*; which since, as you your self confess, he did not, whatever Estates he took away afterwards, it was either for Treason committed by the *English*, or else wrongfully: if the former, he did it as a lawful King; if wrongfully, then as a Tyrant, and as such could obtain no just right against the *English* Nation by his unjust Proceedings.

But indeed after all, you are quite out in your account concerning this matter: for as to the great Trial you now mention'd, it could not be in the first or second Year of King *William*'s Reign, nor could happen sooner than the sixth or seventh of his Reign; for Archbishop *Stigand* was not depos'd till the Year 1070. which was the fourth Year of King *William*; and in the next Year, being 1071. the Annals of *Mailros*, as also the Chronicle of *Thomas Wicks*, place Archbishop *Lanfranc*'s Consecration, and fetching of his Pall from *Rome*: so that it could not be until the Year after this Rebellion at the soonest, when *Lanfranc* was settled in his Bishoprick, that this Suit was commenced by him against Earl *Odo*; and therefore a great many of the *English* Nobility and Gentry had still Estates left them after this Rebellion.

And that they continu'd to have so some Years after this time, appears by those Writs of King *William*, which Mr. *Atwood* hath given us in his *Janus Anglorum, &c.* concerning the Restitution of the Lands belonging to the Church of *Ely*, which are also transcrib'd and allow'd by your Doctor in his Answer to it; and I desire you particularly to consider that Writ of King *William*'s directed to Archbishop *Lanfranc*, *Roger* Earl of *Morton*, and *Jeoffry* Bishop of *Constance*, commanding them to cause to be assembled all those Shires who were present at the Plea had concerning the Lands of the Church of *Ely*, before the Queen went last into *Normandy*; the rest being most material to the Cause in hand, I shall give you in *Latin*: *Cum quibus etiam sint de Baronibus meis qui competenter adesse poterunt & prædicto placito interfuerunt, & qui terras ejusdem Ecclesiæ tenent, quibus in unum congregatis eligantur plures de illis Anglis qui sciunt quo modo terræ jacebant præfatæ Ecclesiæ, die qua Rex Edwardus obiit, & quod inde dixerint ibidem jurando testentur.* From whence we may also gather, that this Trial concerning the Lands which is here order'd, was to be in like manner, and by a Jury of the same sort of *Englishmen*, who try'd the Cause between Earl *Odo*, and Archbishop *Lanfranc*; that is, they were *English* Gentlemen of sufficient Estates, or Tenants *in Capite*. If you please, let us now look into the time when this happen'd, since the Writ doth not tell us when it was, only that it refers to a Plea held concerning the Church of *Ely*, before the Queen's last going into *Normandy*; so that this Trial here mention'd could not happen till after the fourteenth Year of King *William*'s Reign, which I prove thus: This Queen did not come over into *England*, till the Year 1068. when the King return'd with his Queen out of *Normandy* after his Coronation, at which she was not present; after which King *William* went not into *Normandy* till the seventh Year of his Reign, when he went over and took *Mans*; and then whether he carried the Queen along with him is uncertain. But the Annals of *Waverly* tell us, he went over again the next Year, and then he might carry the Queen with him, which might be the first time she return'd into *Normandy*: but it appears by the same Annals, that the King went over the Year after; and staying but a little while, return'd into *Normandy* to fight against his rebellious Son Prince *Robert*; where staying not long, he return'd as soon as he had driven his Son out of *Normandy*. Nor do we find he went over again till the fourteenth Year of his Reign, being the Year 1080. and then I suppose since he stay'd there for some time, he carried the Queen with him; and to this last going over I suppose this Writ we have cited refers: for tho the Queen went over again after this, yet she return'd no more, because she died in *Normandy* in the Year 1083. as *Ingulph*, who was then alive, relates. The use I make of these Particulars is this, That long after the time you suppose the *English* to have lost all their Estates, we here find a great Jury of *Englishmen*, summon'd out of several Shires in *England*, to try this great Cause, concerning the Lands which the Church of *Ely* had been unjustly disseised of. So that here you see, after

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the fourteenth Year of this King, the *Engliſh* ſtill continu'd to keep their Eſtates, and to ſerve upon Juries; and conſequently the Pleadings before them, as well as their Verdict, muſt have been in *Engliſh*.

M. I ſhall not inſiſt upon this point any farther, yet this much you cannot deny, but that all the Pleadings and Proceedings at *Weſtminſter*, as alſo the old Law-Books were all in *French*, as appears by the Mirror of Juſtice, and *Britton*, not to mention thoſe of latter Days, as *Littleton*'s Tenures, and others; and ſo were alſo the antient Year-Books or Reports of Caſes, all written in *Norman French*, even in our own Age: ſo that ſince this proceeded from that great Alteration which the Conqueror made in our Laws, it is alſo a Badge of that Yoke which he impoſed upon the Nation by his Conqueſt. And to make this yet more plain, that very Copy of King *Edward* the Confeſſor's Laws is in old *Norman French*, which (together with King *William*'s Additions to them) *Ingulph* tells us, he brought down with him to his Monaſtery, and which he has inſerted into his Hiſtory, as you may find them in the laſt Edition printed at *Oxford*, and were before publiſh'd by Mr. *Selden* in his Notes upon *Eadmerus*.

F. I cannot deny but that ſome part of the matter of Fact is as you have here laid down; yet it will not follow that this common uſe of the *French* Tongue in our Reports and Laws, did proceed from the *Norman* Conqueſt, or is any Badge of Conqueſt: For firſt, the moſt antient Laws of King *William*, which we find in *Spelman* and *Lambert*'s Collections, are in *Latin*, as they were before the pretended Conqueſt. I grant indeed thoſe you mention in *Ingulph* are in *French*, but they being moſt of them Criminal or Penal Laws, or elſe concerning Tenures, it is no wonder they were publiſh'd in the Language of his Country, that the *Normans* and other *Frenchmen* he brought over with him might underſtand them; and tho they were written in *French*, yet they were proclaimed in the *Engliſh* Tongue, that the *Engliſh* as well as *Normans* might take notice of them. But after theſe Laws, you will not find any antient Charter or Statute in *French*, till the Statute of *Weſtm.* I. which was above 200 Years after your pretended Conqueſt; for all the Charters of this King *William* are in *Latin* or *Saxon*, as that particularly granted by him to the City of *London*; ſo likewiſe were all the antient Charters and Laws of the other ſucceeding Kings, as thoſe of King *William Rufus*, *Henry* I. *Henry* II. King *Stephen*, and *Richard* I. in *Latin* or *Saxon*, and none of them in *French*, as appears by ſeveral of them ſtill to be ſeen in the Archbiſhop's Library at *Lambeth*, and in Sir *Robert Cotton*'s, and alſo *Magna Charta*, and all other Statutes and Charters of King *John*, and *Henry* III. till the Statute of *Weſtm.* I. above mention'd: and therefore it is not likely that this Cuſtom ſhould have taken its original from *Normandy*; for if it had, it would have been begun immediately after your Conqueſt. And as for our Law-Books, tho I grant thoſe you mention'd to be written in *French*, yet is it not the *Norman French*, ſince it differs very much from the Language in which King *Edward*'s Laws are written, which are in *Ingulph*, the *French* of which is ſo obſolete and obſcure, that he that underſtands our Law-*French* very well, can ſcarcely make any ſenſe of them; but our firſt Writers concerning the Laws of *England*, writ in *Latin*, and not in *French*, as you may ſee by *Glanvil*, *Bracton* and *Fleta*, who writ before *Horn*'s Mirror of Juſtice, or *Britton*'s Treatiſe of the Laws of *England*.

As for your Books and Reports, I grant they are in *French*; but that this Cuſtom was not deriv'd from *Normandy*, is alſo certain, ſince the firſt Reports we have begin with the firſt Year of *Edward* II. except ſome few Memorandums of Caſes adjudg'd in the Exchequer in the Reign of his Father, above 200 Years after King *William*'s coming in (as I but now noted;) nor could they be writ in the *Norman* Dialect, ſince we had then nothing to do in that Dutchy, which had been conquered by the *French* in the beginning of King *John*'s Reign, above eighty Years before any Report or Law-Book was writ in *French* at all: and therefore we muſt aſcribe the original of this Cuſtom to ſome other Cauſe than the mere Will and Pleaſure of your Conqueror, and for this we muſt go as high as the Reign of King *Edward* the Confeſſor; who, as *Ingulph* tells us, "having lived long in *Normandy*, and bringing over divers *Normans* with him, "the whole Nation began under this King to forſake the *Engliſh* Cuſtoms, and "to imitate the *French* Manners in many things, ſo that all great Men looked

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" upon it as a piece of good Breeding, to ſpeak *French* in their Houſes, and " to make their Deeds and Charters after the *French* manner: ſo that it was very " eaſy for King *William* after his coming in, who (as *Ingulph* alſo tells us) ab- Ib. p. 71. " hor'd the *Engliſh* Tongue, to make the Laws of the Land to be pleaded in " the *French* Tongue, and to make the Boys to learn at School the firſt Rudi- " ments of their Grammar in *French*; and alſo the *Saxon* or *Engliſh* Hand to be " alter'd, and the *French* Hand to come in uſe in all Books and Writings." And tho I confeſs moſt of the Chief Juſtices and Judges were *Frenchmen* or *Normans*, during the three or four firſt Kings of that Race; yet that alone could not have cauſed this Tongue to be ſo generally uſed, not only in the King's-Court, but alſo in all the Courts at *Weſtminſter*, after *Engliſhmen* began again to ſit there, had it not been for the tacit Conſent not only of the King, and People of Quality, but alſo of the Lawyers themſelves: for the Law-Terms being for the moſt part *French*, they did not only thereby make the Law the greater myſtery to the Vulgar, but they alſo ſuppoſed that theſe Terms being *French*, could not be rendred into any other Language. Yet for all that, it had been impoſſible for this Tongue, which was ſpoke by ſo ſmall a number of Perſons in reſpect of the whole Nation, to have prevailed ſo long among the better ſort of People; had not our Kings for many Ages enjoy'd large Territories in *France*, which occaſioning their frequent going over thither about Affairs of War or Peace, as alſo the *French* Gentry and Nobility's frequent coming over hither, it is no wonder if that Tongue being the Language of the Court, was generally underſtood and ſpoken by all Noblemen, Gentlemen and Lawyers. So that I have heard it from a very good Hand, a Perſon who is well verſed in Antiquity, that a Gentleman being returned on a Jury in the Reign of *Edward* II. was excepted againſt, becauſe he did not underſtand *French*; and hence it is, that not only the Terms of our Law, but alſo thoſe of Heraldry, Hawking and Hunting, are almoſt all *French* to this day: and tho by the Statute of *Edward* III. which you but now mention'd, all Pleas ſhould be in *Engliſh*, and not in *French*; yet I deſire you to take notice, that this did no way extend to any matters of Proceſs upon which Suits are founded; but that the Writs, Declarations, and all other matters of Record were always entered and enrolled in *Latin*, from before the Conqueſt to this very Day, ſo that there was never any Alteration as to that point. Theſe things being conſider'd, it is no wonder if the Judges and Clerks of Parliament, who were in thoſe Days entruſted with the drawing up of all Acts of Parliament, being greater Maſters of the *French* than *Latin* Tongues, choſe rather to draw them up in the former: and thus it continu'd until the Reign of *Henry* VII. when our Statutes began firſt to be drawn up, and enrolled in *Engliſh*.

M. I confeſs you have given me a greater light in this matter than I had before; yet I ſuppoſe you cannot deny that the Tenure of Knights-Service, with thoſe clogs that belong to it of Wardſhip, Marriage, and Relief, were all derived from the *Normans*, as appears by the grand Cuſtomer of *Normandy*, which I have already mention'd: ſo that tho it be true that all theſe are now taken away by a late Statute of King *Charles* II. yet ſince this Tenure, and thoſe Services are not found among the *Saxon* Laws, there cannot be a greater Proof of the antient Power of the Conqueror, or of the Servitude impoſed upon the Nation by him; and therefore I look upon it as a very imprudent part of the late King *Charles*, to part with ſo great a tye, which his Father and all his Predeceſſors had over the Perſons and Eſtates of all the Nobility and Gentry of the Kingdom.

F. I ſhall not take upon me to decide whether it were politickly done or not of King *Charles* II. to part with the Wardſhip, and Services of his Tenants by Knights-Service; but this much is certain, that conſidering the Abuſes and Corruptions that had crept into that Tenure by degrees, ſince the firſt Inſtitution, both by the unfit Marriages of the Heirs, as alſo by the waſte that was often-times committed on the Ward's Eſtate during his Minority, it was certainly a very great grievance and burden to the Subject; and conſidering how many of thoſe Wardſhips were begged by hungry Courtiers, they were of no conſiderable profit to the Crown: and tho I grant they were a very great tye (or rather clog) upon the Eſtates of the Nobility and Gentry of this Kingdom, yet it did not thereby produce any ſuch Love or Obedience, as would retain

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the Tenants better in their Duty before than ſince they were granted away. For the Forfeitures for Treaſon and Felony, and alſo Fines for Alienations, are reſerved to the Crown now as they were before; and as for any love or reſpect which was antiently paid by the Heir, how could there be any ſuch thing? ſince the King granted away the Cuſtody of the Heir, and his Lands, to Perſons who for the moſt part made a mere Prey of them; ſo that they were often married againſt their Conſents, and their Eſtates were delivered to them waſted and ſpoiled: beſides alſo what was exacted from them for Reliefs, and *Ouſter leſmaines*, we need not wonder if it were rather a Cauſe of ſecret diſcontent and hatred of the King's Prerogative than otherwiſe. And therefore I cannot think it was ſo unpolitickly done by the King, to render himſelf gracious and acceptable to his People upon his return to grant their Requeſt, and paſs that Act for taking away Wards and Liveries, and to accept of a Revenue by Exciſe of treble the Value inſtead of it.

But to come to the Original of Knights-Service it ſelf, I do not think it was deriv'd from the *Normans*, ſince we are certain there were Thane-Lands in *England* which were held of the King, and that by Knights Service, before King *William*'s coming over, and there were alſo middle Thanes who held of thoſe Lords above them by the like Service; inſomuch, that in the Laws of King *Knute* there is one concerning the Heriots, which an Earl, the King's Thane, as well as inferior Thanes, were to pay not only to the King, but to other inferior Lords; which are almoſt the ſame as were afterwards reſerv'd by the Laws of King *Edward* the Confeſſor, confirm'd by King *William*, as you would find them in *Ingulph*; only there is no Gold reſerved, but only Horſes and Arms: whereas by the Law of *Knute*, each Earl was to pay two hundred Manenſes of Gold, each King's Thane fifty, and each inferior Thane two Pounds. Only note, that he who is call'd Earl in King *Knute*'s Laws, is call'd a Count in theſe; the Thane a Baron, and the inferior Thane a Vavaſor; and that which is there call'd a Heriot, is here termed a Relief.

Cap. 69.

And that this Tenure by Knights Service, which is now call'd *Eſcuage* or *Servitium Scuti*, was of antient time nam'd *expeditio hominum cum ſcutis*, and was in uſe before the coming in of the *Danes*, is alſo as certain: for Sir *E. Coke* in his fourth *Inſt.* tells us of the Charter of King *Kenulph*, who *Anno Domini* 821. granted to the Abbot of *Abingdon* many Mannors and Lands; and reſerved, *quod expeditionem duodecim virorum cum tantis ſcutis exerceant, antiquos pontes & arces renovent.* And alſo he mentions a like Charter of King *Ethelred* to a Knight call'd *Athelweg*, *Anno Domini* 995. So that you ſee not only ſpiritual Perſons, and great Thanes or Barons; but alſo Knights held Lands by the Service of ſo many Men before your Conqueror, and your Doctor alſo himſelf allows it; for in his Anſwer to Mr. *P.* in all antient Charters in the *Saxon* times he tranſlates the word *Fideles* by Tenants *in Capite*, or Military Service.

Cap. 35. p. 192.

M. I will not deny that Military Fees were in uſe before the Conqueſt, and alſo that the feudal Law did obtain here in many things; and therefore I am ſo far of the Doctor's Opinion, who in his *Gloſſary*, Tit. *Feudal Laws*, tells us; "The feudal Law obtain'd in moſt Nations of *Europe*, and in *Normandy* was "in its full Vigour at the time of the coming over of the Conqueror, but af- "terwards grew more mild and qualify'd, as alſo the Tenure it ſelf; a perfect "Deſcription of which, with all its incidents of Homage, Relief, Ward, Mar- "riage, Eſcuage, Ayds, *&c.* are to be found in the Grand-Cuſtomer, *Cap.* 29, "33, 34, 35. And altho there were Military Fiefs, or Fees, here in the *Saxon* "times, yet not in ſuch manner as after the Conqueſt eſtabliſh'd here by *Wil-* "*liam* the Conqueror, and according to the uſage in *Normandy*; whenas it "appears by Doomſday-Book, in every County he divided moſt, if not all "the Land of *England*, amongſt his *Normans* and Followers." Now that this Cuſtom of Wardſhips is wholly derived from the *Norman* Conqueſt, you ſhall find in Sir. *Edw. Coke*'s fourth *Inſt.* in the ſame Chapter you laſt cited, as you may here read: "You have heard before *de regali ſervitio*, before the Con- "queſt; but that *regale ſervitium* (which was Knights Service) drew unto it "Relief, but neither Wardſhip of the Body or of the Land, as hath been ſaid. "It is true, that the Conqueror, in reſpect of that Royal Service, as a badge of "the Conqueſt, took the Wardſhip of the Land, and the Marriage of the "Heirs within Age of ſuch Tenants; but this extended not to the Tenures of

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" the Subjects by Knights Service, as it appeareth by *Bracton*, *Dicitur Regale* " *ſervitium, quia ſpectat ad dominum Regem & non alium, & ſecundum quod in* " *Conqueſtu fuit adinventum, &c.*" Whereupon Sir *E. C.* notes (in the Margent) this Tenure (as before it appeareth) was not then invented, but the Fruits of this Tenure of the King, *viz.* Wardſhip and Marriage, (which was *Bracton*'s meaning) theſe the Conqueror reſerved for himſelf; but other Lords at the firſt by ſpecial Reſervation, ſince the Conqueſt, reſerved gifts of Lands for themſelves; *Regis ad exemplum totus componitur orbis:* wherein that which we had from the Conqueror we freely confeſs.

F. I ſhall not diſpute this matter, ſince it is doubtful whether this Cuſtom of Wardſhip was *Norman*, or whether it was deriv'd from the *Saxons*, who poſſibly might have ſome reſpect to Orphans in ſuch Caſes, to train them up for the publick Service in point of War; eſpecially being poſſeſſors of a known right of Relief. Thus *Alfred* the *Saxon* King did undertake this Work for the training of ſome particular Perſons in Learning, for the Service of the Publick in time of Peace, and Civil Government: and tho Sir *H. Spelman* is of opinion in his Title *de Wardis*, that Wardſhip of the Heir came in with the Conqueror; yet Sir *John* his Son, (who was alſo a Learned Antiquary) in his Epilogue to his ſecond Book of King *Alfred*'s Life, printed at *Oxford*, ſpeaking of Military Fees granted to the King's Thanes, has this Paſſage. *Hæc etiam Feoda* Pag. 117. *hæredibus ſub Hereoti, ſive relevaminis cujuſpiam quod hæres in terræ redemptionem Regi ſolvere tenebatur, conditione plerumque tranſibat; & ſi hæres minor natu à Patre moriente relinquebatur, Regi educatio ejus (utpote Regis Hominis) committebatur, in utilitatem etiam & commodum ipſius Regis.* But whether the Wardſhip of the Body of the Heir, was in uſe in King *William*'s time or before, is uncertain; for the Land is in the Charter of *Henry* the firſt in *Mat. Paris*, granted either to the Widow or next Heir.

But let theſe Cuſtoms be deriv'd from whence you pleaſe, it is a plain Caſe it could be no badge of Conqueſt upon the People of this Nation, and that by the Doctor's own ſhewing; for were it a *Norman* Cuſtom ever ſo much, if your Conqueror firſt of all impoſed it upon thoſe he brought over along with him, it could never be a Badge of Slavery upon the *Engliſh* Nation, but rather upon the *Normans*, upon whom it was chiefly impoſed: and if they afterwards granted Lands to the *Engliſh* upon the ſame Terms they held them themſelves, they were no more Slaves to whom they were granted, than they were under whom they held them. But indeed this was ſo far from being look'd upon as any badge of Servitude, that if the Doctor himſelf is to be believ'd, " Theſe were *Gloſſary.* Tit. " the only Freemen, and their Services (*Bracton* ſays) were ſo notoriouſly liberi homines. " free, that in Writs of Right it was never mention'd, becauſe ſo well " known; *Notandum in ſervitio Militari non dicitur per liberum ſervitium, &* " *ideo quod conſtat, quia tale Servitium liberum eſt.*" And however rigorous the feudal Law might be at the beginning, it was when your Conqueror came in ſo far mitigated as to the rigour of it, that the Tenants by Knight Service were not only free by King *William*'s Law, from all arbitrary Taxes and Tallies, but alſo obtained a ſettled Inheritance to them and their Heirs, as appears by that Clauſe in King *William*'s Charter already mention'd; and therefore in the Reign of *Henry* III. when *William* of *Warren* Earl of *Surrey* was queſtion'd after the Statute of *Quo Warranto* by the King's Juſtices, by what Warrant he held his Lands, pulling out an old Sword, he anſwer'd to this Effect: " Behold, my Vid. *An ancient MS. in the* Bodleian *Library, cited by Sir* Will. Dugdale *in his Baronage of* England, p. 79. " Lords, here is my Warranty, my Anceſtors came into this Land with *William* " the Baſtard, and obtained thoſe Lands by the Sword, and I am reſolv'd with " this Sword to defend them againſt any whoſoever ſhall go about to diſpoſſeſs " me; for the King did not himſelf alone conquer the Land, but our Progeni- " tors were Sharers with him and Aſſiſtants therein."

As for what you ſay, That the Laws in the Cuſtomary of *Normandy*, are the ſame with the Laws of *England*; it is no more than what divers *French* Writers have taken notice of, but do not attribute their Agreement to their being borrow'd from the *Normans*, but quite contrary: for in the firſt place moſt of the Learned Men ſay, That the firſt eſtabliſhing of the Cuſtomary of *Normandy*, was in *Henry* I's. time, and afterwards again about the beginning of *Edward* II's time, when *Normandy* was not under the King of *England*. And *Sequerius* a *French* Author relates, that King *Henry* I. eſtabliſh'd the *Engliſh* Laws

Vid. *Mr.* Whitlock's *Speech in Parliament*, 1650. *printed in his Memorials*, pag. 461.

Laws in *Normandy*, and with him do alſo agree *Gulielmus Brito*, *Rutelarius*, and other *French* Writers, who mention alſo that the Laws in the Cuſtomary of *Normandy* are the ſame with the Laws collected by our *Engliſh* King *Edward* the Confeſſor: an additional Teſtimony hereof is out of *William de Ruville de Alenſon*, who in his *Latin* Comment upon the Cuſtomary, proves and demonſtrates that the Laws and Cuſtoms of *Normandy* came from the *Engliſh* Laws and Nation, either not long before or after *Edward* the Confeſſor's time.

Vid. Coke's *Preface to his Reports.*

In the *Norman* Cuſtomary, there is a Chapter of Nampes or Diſtreſſes; and it is there decreed, that one ſhould not bring his Action upon any Seiſure, but from the time of the Coronation of King *Richard*, and this muſt be our King *Richard* I. becauſe no King of *France* was ever of that Name; and the words *Nampes* and *Withernams* were *Saxon* words, taken out of the *Engliſh* Laws, ſignifying a Pawn or Diſtreſs, and in the ſame ſenſe are uſed in the Cuſtomary. But if you have nothing more to object againſt what I have now ſaid, pray proceed to your laſt Head, and let me ſee how you will prove, that the *Engliſh* loſt all their antient Liberties and Privileges which they enjoy'd under the *Engliſh Saxon* Kings.

M. I never heard ſo much before concerning the original Uſe of the *French* Tongue in our Reports and Law-Books, but yet this much I think you will not deny: Firſt, that the *Norman French* was never uſed in our Courts of Juſtice, till after the Conqueror's Entrance. Secondly, That he did his endeavour totally to root out the *Engliſh* Tongue, by ordering all Children to learn the firſt Rudiments of their Grammar in *French*; and as for what you have ſaid concerning the Cuſtomary of *Normandy* being eſpecially as to Tenures derived from the *Engliſh* Laws and Cuſtoms, I do not deny, but that it may be the opinion of ſome *French* Writers that it was ſo: but I ſhall believe it, when they can prove that the Wardſhips and Marriage of the Heir of the Tenants by Knights Service, as alſo thoſe Aids they were to pay the King, or any other Lord they held of, towards making his eldeſt Son a Knight, and marrying his eldeſt Daughter, were in uſe in *England* before the Conqueror came over.

Hiſt. Ingulph.

But to obſerve your Commands, I ſhall now proceed to ſhew that by the Conqueſt, the *Engliſh* for a long time loſt all their antient Rights and Privileges, till they again obtained them either by their mixing with the *Normans*, ſo that all diſtinction between them and the *Engliſh* were taken away, or elſe they were reſtor'd by the Charters of King *Henry* I. King *John*, and King *Henry* III. I ſhall therefore divide the Privileges of *Engliſhmen* into theſe three Heads: Firſt, Either ſuch as concerned their Offices or Dignities: Or, Secondly, Such as concerned their Eſtates: Or laſtly, Such as concern'd the Trial for their Lives: in every one of which, if I can prove the *Engliſh* Natives, as well of the Clergy as Nobility, ſuffered conſiderable Loſſes and Abridgments of their antient Rights and Liberties which they formerly enjoy'd, I think I ſhall ſufficiently prove the point in hand. As to the firſt Head, *Ingulph* tells us,

Pag. 70, 71. *Edit.* Oxon. "That the *Engliſh* were ſo hated by the *Normans* in his time, that how well "ſoever they deſerv'd, they were driven from their Dignities; and Strangers, tho much leſs fit, of any Nation under Heaven were taken in their

Pag. 93. "places." And *Malmesbury* who liv'd and writ in the time of *Henry* I. ſays, "That *England* was then become the Habitation of Foreigners, and the Rule "and Government of Strangers; and that there was at that day no *Engliſhman* an Earl, Biſhop, or Abbot; but that Strangers devoured the Riches, "and gnawed the Bowels of *England*, neither is there any hope of ending this "Miſery." So that it is plain they were now totally depriv'd of all Offices and Dignities in the Common-Weal, and conſequently could have then no place in the Great-Council, the Parliament of the Nation, both for the raiſing of Taxes, and the making of Laws. And tho I grant Mr. *Petyt* and your ſelf ſuppoſe you found a Clauſe in the Conqueror's *Magna Charta*, whereby you would prove, that all the Freemen of this Kingdom ſhould hold their Lands and Poſſeſſions well and in peace, free from all unjuſt Exactions and Taillage, ſo as nothing be exacted or taken unleſs free Services, *which of right they ought and are bound to perform to us; and as it was appointed to them, and given and granted to them by us as a perpetual Right of Inheritance, by the Common-Council of*

B. A. P. p. 36.

the

the whole Kingdom; yet this Common-Council will not help you, for without doubt here were no *Engliſhmen* in it; for certainly they would not grant away their own Lands to Strangers. Theſe were the *Saxon* Lands which *William* had given in Fee to his Soldiers, to hold them under ſuch Services as he had appointed them, and that by right of Succeſſion or Inheritance.

We will now come to the ſecond point, *viz.* the Privileges the *Engliſhmen* loſt as to their Eſtates: for whereas before the Conqueſt you affirm, the King could not make Laws, nor raiſe Taxes without the Common-Council of the Kingdom; it is certain King *William*, and his immediate Succeſſors, did by their ſole Authority exerciſe both theſe Prerogatives. As for his Legiſlative Power, it appears from the words of his Coronation-Oath, (as you your ſelf have repeated it out of *Florence* of *Worceſter*, and *Roger Hoveden*) the Concluſion of which Oath is; *ſe velle rectam legem ſtatuere & tenere, Rapinas injuſtaque Judicia penitus interdicere.* Now the Legiſlative Power was then lodg'd in him, why elſe did he ſwear to appoint right Laws? For if the Conſtitution had been ſettled as it is at preſent, the Parliament could have hinder'd him from making any other; and that he could do ſo, appears by that Yoke of Servitude, which *Matthew Paris* (as well as other Authors) tells us, "King *William* by his own Pag. 7.
"Authority impoſed upon the Biſhopricks and Abbies in *England* which held
"Baronies, which they had hitherto enjoyed free from all ſecular Servitude:
"he now, ſays he, put them under Military Service, ſeſſing all thoſe Biſhopricks
"and Abbies, according to his Pleaſure, how many Knights or Soldiers each of
"them ſhould find to the King and his Succeſſors: And putting the Rolls of
"this Eccleſiaſtical Service in his Treaſury, he cauſed to fly out of the King-
"dom many Eccleſiaſticks who oppoſed this wicked Conſtitution." Now if he could do this upon ſo powerful a Body, as the Biſhops and Abbots were at this time, he might certainly as well raiſe what Taxes he pleaſed upon all the People of *England*; and therefore *Henry* of *Huntington* tells us, that King *William* upon his return out of *Normandy* into *England*, *Anglis importabile tributum impoſuit. Lib.* 3. *p.* 278. And that his Son *William Ruſus* impoſed what Taxes he would upon the People, without conſent of the Parliament, appears by that Paſſage of *William* of *Malmesbury*, which he relates in the Reign of this King, as alſo in his third Book *de Geſtis Pontificum*, concerning *Ranulf*, whom from a very mean Clerk he made Biſhop of *Durham*, and Lord Treaſurer: the reſt I will give you in *Latin*; *Iſte, ſi quando edictum regium proceſſiſſet ut nominatum tributum Anglia penderet, duplum adjiciebat, ſubinde ridente Rege ac dicente ſolum eſſe hominem, qui ſciret ſic agitare ingenium; nec aliorum curaret odium, dummodo complaceret dominum.* So that you may here ſee that the King's Edict or Proclamation did not only impoſe the Tax at his pleaſure, but his Treaſurer could double it when he had a mind to it, without Conſent of the great Council or Parliament, as we now call it: and this Prerogative was exerciſed by divers of his Succeſſors, till the Statute *de Tallagio non concedendo* was made.

But to come to the laſt Head concerning the alteration of Trials for Mens Lives and Eſtates by the Conqueror, from what they were before; it is certain that whereas before the Conqueſt there were no other Trials for Mens Lives but by Juries, or elſe by Fire or Water Ordeal, which was brought in by the *Danes*; the Conqueror tho he did not take away theſe, yet alſo added the Law then in uſe in *Normandy*, of trying not only Criminal but Civil Cauſes by Duel or Combat: all the difference was, that in Criminal Caſes where there was no other Proof, the Accuſer and Accuſed fought with their Swords, and the Party vanquiſhed was to loſe his Eyes and Stones; but in Civil Cauſes they only fought with Baſtoons headed with Horn and Bucklers, and he or his Champion who was overcome loſt the Land that was contended for. From whence you may take notice alſo of a great alteration in the Law, not only concerning Trials, but capital Puniſhments: ſo that before the Conqueſt, all Crimes, even Manſlaughter it ſelf, were fineable according to the Quality of the Perſon, and the Rates ſet upon each Man's Weregyld, or price of his Head, as you will find them ſet by the Laws of King *Athelſtan*; after that time inſtead of Fines, capital or corporal Puniſhments became chiefly in uſe.

I ſhall not inſiſt much upon divers leſſer Things, which King *William* as a Conqueror impoſed on the People of *England*; as diſarming them of all offenſive Weapons, forbidding them to hunt or kill any Deer in his Chaſes or Fo-

rests, under the Penalty of loss of Eyes and Members, as also keeping up and reinforcing the antient Laws of Decenaries or Tythings, whereby every ten Families were bound with their tenth Man or Tythingman, Body for Body, of each others good abearance; as also that Law forbidding all sitting up late at Night, or Assemblies after eight of the Clock, but that every one should go to Bed, and put out both Fire and Candle at the ringing of the Coverfeu Bell; these things I think are very sufficient to prove that King *William* as a Conqueror did very much abridge, and in some things wholly take away the antient Privileges and Liberties of the *English* Nobility, Clergy and Commons, and did also make many and great Alterations, not only in the Forms of Pleadings, but also in the very Substance of our Laws, both Criminal and Civil: and if he did not make more Alterations of this kind, it was wholly owing to his free Will and Pleasure; since, as *Eadmerus* tells us, he ordered all Divine and Secular things according to his Pleasure.

F. That I may the better answer what you have said, I shall partly grant, and partly deny the matters of Fact you have alledged; and also further prove that if they had been all as you have laid them, yet would not they prove your Conclusion, That King *William* by his own Arbitrary and Tyrannical Actions could create any Right by Conquest, either to himself or to his Successors. And therefore to begin with your first Head, *viz.* the Privileges of the *English* Nobility as to Offices and Dignities, tho I grant it was true, as the Authors you have cited relate, that scarce any *Englishman* was, when they writ, either a Bishop, Earl or Abbot, yet this is to be understood only of the latter end, and not the beginning of his Reign: for as to the Bishops and Abbots, I do not read of any more than *Stigand* Archbishop of *Canterbury*, and *Egelric* Bishop of *Durham*, who being depriv'd of their Bishopricks, had Successors put into their rooms in their Life-times; and yet in the place of this last, not any *Norman*, but one *Walcher* an *Englishman* was named by the King to succeed. And as for the Earls, of all those who had been against him and opposed his coming in, there was not one but he received into favour, and continued in his Dignity and Estate, as in particular the Earls *Eadwin* and *Morchar* Brothers, together with *Waltheof* and *Siward*, and *Edgar Atheling*, whom they had named King of *England*, who all kept their Earldoms and Estates till terrified by the King's severe and tyrannical Proceedings; the three first of these fled away as you have already shewn: tho I confess Prince *Edgar* had for two or three Years before this, fled into *Scotland*; but yet was afterwards restor'd to the King's Favour and his Estate. Nor do I find any considerable Alteration in the King's manner of disposing of his Honours or Preferments, either Ecclesiastical or Civil, till Earl *Waltheof* was convicted of being in the Plot, with *Ralph de Waher* Earl of *Norfolk*, and other Lords, as well *English* as *Normans*, to expel King *William*; and from that time (being the eighth Year of his Reign) I grant he changed his whole course of Government, and put no more *Englishmen* into any Places of Honour or Profit: tho *W. Malmesbury* endeavours to excuse the King's Severity in these words, *Inde propositum regis fortassis meritò excusatur, si aliquando durior in Anglos fuerit, quod penè nullum eorum fidelem invenerit*: tho with this Author's good leave, the King had been the cause of this Conspiracy, by his own Tyranny and Breach of Oaths, as I shall shew you by and by.

So that either this King was mov'd by just Provocations thus to debar all *Englishmen* from being prefer'd to Dignities or Offices, or he was not; if the former, and that he had just cause so to do, it was no more than what any other foreign Prince who had no Hereditary Right to the Crown, would have done in the like Case: But if the latter, it was not only contrary to Justice, but also to his own Coronation-Oath, one Clause of which, as *Malmesbury* shews us in his *de Gestis Pontificum*, was, *quod se modestè erga subditos ageret, & æquo jure Anglos & Francos tractaret.* So that this King's arbitrary and violent Proceedings, after he had for some time govern'd as a lawful King, tho they might prove him a Tyrant, yet they could by no means make him a Conqueror. And as for the latter part of your Argument, whereby you would prove that in his Reign there were no *Englishmen* in the great Councils of the Kingdom, that can only be understood (in the strictest sense) of the times after the great Conspiracy I have now mention'd; for before, it is very evident that there were many Bishops,

Lib. 3. pag. 221.

Biſhops, Earls and Barons ſtill left, who muſt have been Members of the Great Council. Nor can you prove that the Law I have mention'd againſt the King's taking the Taillage or Taxes without their Conſent, was made after that time; but let it be made when it will, you ſhall never perſuade me it was enacted without any *Engliſhmen* being preſent, till you can prove to me that there were no *Engliſh* Tenants *in Capite* towards the end of his Reign, and that there were then no Knights, Citizens or Burgeſſes that repreſented the Commons in the Great Council; and can give a better anſwer to thoſe Arguments I have given you to prove they were there; eſpecially that remarkable Clauſe in the Concluſion of this King's Charter, to the Abbey of *Weſtminſter*, which mentions divers principal Perſons, both of the Clergy and Laity, to have been ſummon'd to that famous Synod or Great Council, when this Charter was granted.

I come now to your next Head, whereby you would prove this King's Abridgment of *Engliſh* Privileges, as to their Eſtates and Properties, to begin with that of the Legiſlative Power; which, as you ſay, was then wholly in the King. Admit it were ſo, it will not prove that for which you urge it, *viz.* that it is a ſign of the King's Abſolute Conqueſt over the *Engliſh*: for if the Great Council of the Kingdom had then loſt its antient Right, it was his *Normans* and *Frenchmen*, as well as the *Engliſh*, that he bereaved of their antient Privilege, of giving their Conſent to Laws; ſince it is very certain that neither the King of *France*, nor the Duke of *Normandy* could at that time make any Laws without the Conſent of their Eſtates.

But the Truth is, that your Conqueror could not do it; for if the *Normans* he brought over with him, had, as you ſuppoſe, the greateſt ſhare of all the Lands in *England*, they would have been too powerful a Body of Men to be thus made Slaves at his pleaſure. Indeed his own Laws ſhew the contrary, for in that very Law it appears otherwiſe: "Whereby all the Freemen of L. L. Guil. 55.
"the Kingdom were to hold their Lands and Poſſeſſions free from all unjuſt
"Exactions and Taillage, and that nothing ſhould be exacted of them, but
"their free Service, which they were bound to do according as it is appointed
"them by the King, and it is granted them by an Hereditary Right for ever,
"by the Common-Council of the whole Kingdom." Whereby you may ſee that they had their Lands and Liberties granted them, for an Hereditary Right, not only by the King, but by the Common-Council of the Kingdom, and that the King could not alter King *Edward*'s Laws without their Conſent. The Charter of King *Henry* I. ſays expreſly; *Legem Regis Edwardi vobis reddo, cum illis emendationibus quibus Pater eam emendavit Concilio Baronum ſuorum.* Therefore as for that Authority you have brought out of *H. Huntington*, that upon this King's return from *Normandy*, he impos'd a heavy Tax upon the *Engliſh*; this is either to be underſtood of ſuch a Tax as they gave him voluntarily, tho perhaps they durſt not do otherwiſe, as the States of *Provence* and *Languedoc* are fain to do to the King of *France* at this day, when he requires it; and yet he does not claim thoſe Countries by right of Conqueſt: Or if King *William* impos'd this Tribute without their Conſents, it was not only contrary to the Law juſt now mention'd, but alſo to his own Coronation-Oath, whereby he ſwore to prohibit all unjuſt Rapines, and that he ſhould behave himſelf equitably towards his Subjects; with which, certainly his taking away their Mony without their Conſents, would by no means conſiſt. But to anſwer that part of the Coronation-Oath which you think makes moſt for you, that whereby he ſwore only to make right Laws, which muſt have ſuppos'd the Power to have been in himſelf, becauſe the Parliament might have hindered him from doing otherwiſe; this is but a Cavil, for it is already prov'd that he was to make Laws, and raiſe Taxes by the Common-Council of the Kingdom: and therefore theſe words may very well bear another Senſe, and do only give the King a Negative Voice of paſſing ſuch Laws as the Great Council ſhould offer to him, or elſe ſuch as he might propoſe to them for their Conſent. And I ſuppoſe you will not deny but that it is very poſſible, that either the King or the Parliament may propoſe ſuch Laws as may not ſeem equitable, or juſt; and then certainly both the one and the other have a negative Vote, and ought not to give their Conſents to them.

But to anſwer your laſt Inſtance, whereby you would prove that this King as a Conqueror impos'd what Taxes and Services he pleaſed; not only upon the

Laity, but the Clergy too; by making the Biſhopricks, and greater Abbies liable to Knights Service, which you ſuppoſe to have been done by his ſole Authority, without any Conſent of the Common-Council of the Kingdom: this is only *gratis dictum*, and is indeed altogether improbable. For if the King had done this by his ſole Power, he would have impos'd this Service upon all the Abbies in *England*, whoſe Lands might have been as well reduc'd to Knights Fees, as thoſe that were put under that Service; and ſo might have been forc'd to find as many Soldiers as they had Fees, as well as the Biſhopricks and greater Abbies. But indeed the Clergy were too powerful a Body to be thus arbitrarily impoſed upon, and they would ſoon have complained to the Pope againſt the King for this new Servitude he had impoſed upon them; and therefore I think we may with much more ſafety conclude with Mr. *Selden* in his Titles of Honour, that this Impoſition of Knights Service upon the Biſhopricks and Abbies, was done by the Common-Council of the Kingdom, it being too great a matter to be done without it. For it appears by *Eadmerus*, that the King held a Council this very Year, tho the Laws and Proceedings of it are all loſt; and this is the more likely to be ſo, becauſe this Impoſition was not laid upon all the Abbies in *England*, but only upon the Biſhopricks, and ſuch Abbies as were of Royal Foundation, and held immediately of the King before your Conqueſt, and were only ſuch as enjoyed whole Baronies; as *Mat. Paris* there tells us.

I ſhall now come to your laſt Head, whereby you would prove that your Conqueror, by his ſole Power, alter'd the Courſe of Trials, and introduc'd the Cuſtom of Duel or ſingle Combat, in Civil as well as Criminal Cauſes. The chief Argument you have for this, is, that there is no mention made of this Trial by Duel in our *Engliſh Saxon* Laws before the Conqueſt: which is but a negative Argument at the beſt; and you can ſhew me no antient Author that ſays expreſly that King *William* introduc'd it: and tho I grant it is firſt mention'd in his Laws, yet does it not therefore prove that it was not here before, ſince it was certainly in uſe among the *Francs* and *Longobards*, who were *German* Nations as well as the *Saxons*. But admit it were firſt introduc'd by the Conqueror, this was no Badge of Conqueſt, for the *Normans* as well as the *Engliſh* were ſubject to this Trial, which was in uſe in *France* and *Normandy* long before this King's coming in: ſo that admit he firſt eſtabliſh'd it here, it might not have been done by his ſole Power, but by ſome Law made in the Great Council of the Kingdom, tho it be now loſt; as we have very few of the Laws that were made by this King now left us, beſides thoſe which are called the Laws of King *Edward*, with this King's alteration of them: all which was certainly done in the Common-Council. The like I may ſay concerning the alteration of Puniſhment for Deer-ſtealing and other Crimes, which were either puniſhable by pecuniary Mulcts, or elſe by Death, before the coming in of the *Normans*; ſince thoſe Alterations might be alſo made by the Conſent of the Great Council: but that the ſame Foreſt-Laws were in uſe before the Conqueſt as after, you may ſee in the Foreſt-Laws of King *Knute*, as you will find in Sir *H. Spelman's Gloſſary*, Title *Foreſta*; only the Puniſhments are there Pecuniary, or elſe Loſs of Liberty, which after your Conqueſt was changed into the Loſs of Eyes and Members.

But as for other leſſer matters, as his diſarming the *Engliſh*, and forbidding Night-Meetings, if theſe things were done (as I do not find any expreſs Law for them, for there is no ſuch thing mention'd in the Law *de nocturnis Cuſtodiis*) they were practis'd by this King for his own Security, after the *Engliſh* had by their frequent Inſurrections made him uſe all the means he could to prevent it for the future; ſo that at the moſt they were but temporary Conſtitutions, and did not laſt long: nor could this Law of the Coverfeu-Bell be any Badge of Slavery on the *Engliſh*, ſince we find the ſame Cuſtom to have been us'd in *Scotland*, which you will not ſay is a conquer'd Nation; nor do I find the *Normans* after they came over, were any more exempted from this Law than the *Engliſh* Natives. But I much wonder you ſhould reckon the Laws of Decenaries or Tythings, among the Badges of *Norman* Slavery; ſince if you have read any thing in our *Saxon* Laws, you will find, as *Ingulph* tells us, that King *Alfred* firſt appointed, *ut omnis indigena legalis, in aliqua Centuria & Decima exiſterit, & ſi quis ſuſpectus de aliquo latrocinio per ſuam Centuriam, vel Decuriam*

Vid. Ingulph. Hiſt.

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condemnatus, pœnam demeritam incurreret. So that whatever other Laws you find, either of our *Saxon* or *Daniſh* Kings, or elſe among thoſe of King *William*, concerning Triburghs and Tythings, it was only to confirm or reinforce this antient Conſtitution. But that not only the meaneſt ſort of Freemen, but the greateſt and beſt Nobility and Gentry were ſubject to this Law of Tythings, may appear by that Law I have already quoted of King *Knute*, whereby every Freeholder was " to have his Family in his Pledg, that is, was " bound to anſwer for them to the King; and if he were accuſed to have let " them run away by his Conſent, he was to purge himſelf by his own Oath, " and alſo the Oaths of five other Thanes, that he was innocent." So likewiſe the Laws of King *Edward*, confirmed by King *William*, are very particular on this Subject, " That all Archbiſhops, Biſhops, Earls, and Barons, Vid. *Hoveden.* " ſhould keep their Knights and Servants there mentioned in their Frithborg, " that is, in their Franc Pledg, whereof the Lords themſelves were to be the " Sureties, as appears by what follows, *viz.* that if any of them offended, " their Lords ſhould be obliged to do Right in their Courts." And to the ſame purpoſe is the 49th Law in *Ingulph*'s Copy of theſe Laws; the words are theſe: *Echaſcun Seniour ait ſun ſeriant u ſun plege, que ſi nele rete que ait a dreit el Hundred*; that is, that every Lord keep his Servant in his Pledg, that if he offend, Right may be done in the Hundred.

So that upon the whole matter, I can ſee nothing conſiderable impoſed by your Conqueror upon the free-born *Engliſh* Subjects, which they were not tied to before the Conqueſt, or which did not reach all the *Normans* he brought over with him, as well as they.

M. I do confeſs I did not believe there was ſo much to be ſaid to prove that *William* the Conqueror never altered the Law of *England*, in any of its material Parts: but ſince you have gone thus far, pray proceed to ſhew me, that he any ways confirmed all the Laws of the *Saxon* Kings his Predeceſſors; ſince, I conceive, as a Conqueror, he might juſtly have vacated what of them he would, and I do not ſee any thing in his Coronation-Oath that could have hindred him from it.

F. I doubt not but to give you very good ſatisfaction in this Point: for not only your Conqueror's Will was never declared, that the former Laws ſhould be abrogated, and till ſuch Declaration all Laws ought to remain in force, even in the Conqueſt of Chriſtians againſt Chriſtians, according to Sir *Edw. Coke*'s Pag. 17. Opinion in *Calvin*'s Caſe; but indeed the antient and former Laws of the Kingdom were ſo far from being abrogated, that they were all confirmed by him. For in his fourth year, by the Advice of his Baronage, he ſummoned to *London*, as the words are in the Book of *Litchfield*, *Omnes Nobiles, Sapientes, & Lege ſuâ eruditos, ut eorum Leges & Conſuetudines audiret:* Or as *Hoveden* relates it out of a Collection of Laws written by *Glanvil*, *Fecit ſummoniri per univerſos conſulatus Anglia, Anglos Nobiles, & Sapientes, &c.* And twelve were returned out of every County, who ſhewed what the Cuſtoms of the Kingdom were, which (as Mr. *Selden* tells us in his Hiſtory of Tythes) being written by the hands of *Aldrid* Archbiſhop of *York*, and *Hugo* Biſhop of *London*, were, with the requeſt of the ſame Barons, confirmed in that Aſſembly, which was a Parliament of that time. And then in *Hoveden* follow the Laws of *Edward* the Confeſſor, ſo confirmed by King *William*, among which is that Law concerning the Office of a King, which I have now given you: And before this, at the very beginning of his Reign, he alſo confirmed the Privileges of the City of *London*, as appears by his Charter in *Saxon*, which is to be ſeen at this day; which is alſo confirmed by *Ordoricus Vitalis: Gulielmus Rex multa Lundonia poſt-* Id. lib. IV. *quam coronatus eſt, prudenter, juſtè, clementerque diſpoſuit quædam ad ipſius Civi-* fol. 505, 506. *tatis commoda, vel dignitatem, alia quæ genti proficerent univerſæ; nonnulla quibus conſuleretur Eccleſiis Terræ, Jura quæcumque dictavit, optimis rationibus ſanxit, Judicium rectum nulla perſonæ nequicquam ab eo poſtulavit.* So that nothing is plainer, than that at the beginning of his Reign he ſtrove to oblige all ſorts of People, as well the Clergy as Laity, to a good liking of his Government.

M. But yet for all this you your ſelf have granted, that after the time of his Confirmation of theſe Laws of King *Edward*, you cannot deny, whether provoked by the frequent Inſurrections of the *Engliſh*, or elſe reſolving to make

uſe of his Right by Conqueſt, he fell very ſeverely upon the *Engliſh* Nobility and Gentry, and outed moſt of them of their Eſtates, and forced them to flee into foreign Countries; ſo that it ſeems he did not lay down his Sword, as ſoon as ever he came to the Crown, but uſed it as he pleaſed againſt whatſoever *Engliſh* he thought might be dangerous to his Government: ſo that notwithſtanding his Confirmation of King *Edward*'s Laws, he did not ſeem to renounce his Title by Conqueſt. And as for your Authority concerning the Conqueror's confirming theſe Laws, the main ſtreſs of the Queſtion will lie, whether he admitted any of the *Engliſh* into his great Council, to conſult of the weighty Affairs of the Kingdom, when he had once thorowly ſettled himſelf on the *Engliſh* Throne, eſpecially if it be conſidered that King *William* kept not all the Promiſes which he made at all times. Now as you your ſelf allow, this Grant was made in the fourth year of his Reign, but he had not then ſettled himſelf ſo well as he would, nor had he then made an entire Conqueſt of the Nation; that was not done until after the great appearance of the natural *Engliſh* in Arms, and the great meeting which *Frederick* Abbot of *St. Albans*, with others, headed at *Berkhamſtead*, which was not until above four or five years after this Confirmation: ſo that your Teſtimony from the *Litchfield* Chronicle and *Roger Hoveden*, being before he ſettled himſelf as he intended to do, ſignifies nothing; and that it was from ſome time after this Tranſaction, that *Mat. Paris* reckons the thorow Conqueſt and ſubduing the Nation, appears by this Note in the beginning of the Life of Abbot *Paul*, Succeſſor to this *Frederick*, *Hic primus Abbas hujus Eccleſiæ fuit, poſtquam Anglia Normannis penitus fuit ſubjugata.*

F. I will not deny the matter of Fact in great part to be as you ſay; but whether the *Engliſh* were to blame to make theſe Inſurrections, or whether they were provoked to it by the King's unreaſonable Severities, I have not now time to diſpute, nor are we competent Judges of it at ſo long a diſtance of time: if it were their fault, he had no doubt very good cauſe to do as he did, and to puniſh ſuch as were guilty; but it was altogether unjuſt and tyrannical to puniſh the Innocent with the Guilty. Nor could he have any Right to do it as a Conqueror, ſince by taking his Coronation-Oath to deal mercifully with his Subjects, and to treat both *Engliſh* and *French* with equal Right, he had renounced that Title. And that he looked upon himſelf as a Tyrant, if he had governed without being crowned, or taking the ſame Oath as his Predeceſſors, I ſhall prove to you from Abbot *Bromton*'s Chronicle, the Author of which lived in the time of King *Richard* I. who has (*col.* 962.) theſe words: *Cumque Willelmus Dux Normannorum, Conqueſtor Angliæ, Tyranni nomen exhorreſceret, & nomen legitimi Principis induere vellet, a Stigando Cant. Archiepiſcopo in Regem petiit conſecrari, &c.*

But your Reply, that he did not ſhew himſelf a perfect Conqueror till he was thorowly ſettled, is very pleaſant: as if being ſolemnly crowned, and taking an Oath to govern juſtly and according to Law, after four years quiet Poſſeſſion, and a voluntary Confirmation of the Laws of his Predeceſſors, were not ſufficient Signs of his peaceable Settlement upon the Throne; unleſs you will have a King to be never ſettled, until he has, by the force of a Standing Army, got ſufficient power to do all he deſigns, that is, to take away his Subjects Liberties and Eſtates at his pleaſure, contrary to his own Oath, and the Laws he has agreed to. If thoſe be Signs of a thorow Settlement, pray conſider whether the King that is gone away, was ever thorowly ſettled at this rate, tho I confeſs he was in a very fair way to give us ſuch a thorow Settlement. But ſince you date this thorow Settlement from that great Tranſaction of Abbot *Frederick*, I am not afraid to appeal to *Matthew Paris*, from whom you have borrowed this Relation, where he tells us thus: "That "after *Lanfranc* was made Archbiſhop, the King being now ſtrengthened with "both Swords, began more ſeverely and manifeſtly to oppreſs the *Engliſh*; "who ſeeing it nearly concerned their very Lives, calling a great many toge-"ther, they made *Edgar Atheling* their Leader, in whom the *Engliſh* placed all "their hopes; but among all the *Engliſh*, *Frederick* Abbot of *St. Albans* was "the chief Promoter thereof, being a generous Man, and to be feared for his "Riches and Power: therefore the King began to be vehemently afraid leſt he "ſhould loſe the whole Kingdom, which he had gained by the Effuſion of ſo "much

Vid. Mat. Pariſ. in vita Frederici Abbatis.

" much Blood, and alſo hazard of his Life; and therefore being luckily taught " by the Archbiſhop's Prudence, he began to act more mildly with the chief " Men of the Kingdom, humbly propoſing Terms of Peace, and with a plea- " ſant Countenance inviting them to a Treaty (tho deceitful, as the end at " laſt declared) therefore the ſaid *Engliſh* met him at *Berkhamſtead*, thinking " no harm, under the leading of Abbot *Frederick*; where, after many Diſ- " putes, Archbiſhop *Lanfranc* being preſent, the King ſwore upon all the Re- " licks of the Church of *St. Albans*, as alſo upon the holy Evangeliſts, invio- " lably to obſerve the good antient approved Laws of the Kingdom, which " the pious Kings of *England* his Predeceſſors, and chiefly King *Edward* had " eſtabliſhed: and ſo being pacified, they all returned home very well ſatiſ- " fied." So that you ſee this was the third time whereby he renounced all Right of Conqueſt (if ever he had any) by ſwearing expreſly to obſerve all the antient Laws of the Kingdom, ſince they found his Coronation-Oath would not bind him, beſides his ſo ſolemn Confirmation of King *Edward*'s Laws, in the great Council of the Kingdom not long before.

M. But pray read a little farther, and ſee how he reſented this Force now put upon him, and whether at all he intended to keep what he had ſworn, or to diveſt himſelf of his Right of Conqueſt; and therefore give me now leave to read the reſt out of this Author: " But the King cunningly hiding his De- " ſigns, within a few days after ſtudied how to overcome and ſupplant thoſe " diſperſed and aſunder, whom he could not, when joined and confederate " together; which he performed by killing, diſinheriting, and baniſhing many " of them, and violating the above-mentioned Laws. And the *Engliſh* being " thus ſpoiled at pleaſure, and impoveriſhed, without any legal Judgment, he " therewith enriched his *Normans*, to the great Provocation of his natural " *Engliſh* Subjects, who had of their own accord thus exalted him." So that you ſee he never intended to keep his Oath that was thus forced upon him, for Conquerors do not love to be made Slaves to their words whether they will or no; and therefore I may give you an Anſwer both as to his Coronation-Oath, as alſo to this now mentioned, from an old *Engliſh* Proverb, *That there was never any Oath but was either broken or kept.* More Conquerors than one have uſed fair Pretences, and made ſmooth Promiſes, and dealt cunningly with the People to carry on their Deſigns, and have at firſt taken plauſible Oaths, and broken them afterwards; nay took them when they intended not to keep them, and knew they could not: And for Oath-breaking, *Harold*, in his Anſwer to Duke *William*, when he demanded the Kingdom of him, had given him a fair Example, that *ſtultum Sacramentum eſt frangendum.* Many ſpecious Oaths, Vows, and Covenants were contrived, and taken by crafty and deſigning Men in the late times, and impoſed upon the People, contrary to the Oath of Allegiance they had before taken, for no other ends than to cheat them into Rebellion, and to make them Authors of their own Slavery; which was diſcovered too late, when they were under the power of an Army, and could not help themſelves, as I could prove at large would the time permit.

B. A. A. p. 289.

F. Before I give you a poſitive Anſwer to what you have ſaid, tho I do believe a great deal of the matter of Fact to be true, as *Matthew Paris* hath related it either from Tradition, or elſe from the Legier-Book of his own Abbey; yet I very much doubt, whether out of Hatred to this King's ſevere Proceedings, they did not repreſent King *William*'s Cruelty and Severity much greater than it was: for tho I grant, after this time, he turned a great many more of the *Engliſh* Nobility and Gentry out of their Eſtates, and put divers of them to death; yet whether he did this without any colour of Law or legal Proceſs, is very much to be doubted, ſince we find many Forfeitures mentioned in Doomſday-Book, which had been needleſs, if the King had ſeized all the *Engliſh* Eſtates without any legal Trial: As for example, in *Eſſex* in *Barnſtable* Hundred, *In Burâ de iſtis Hidis eſt una de hominibus foris factis erga Regem*; and this was the way of Expreſſion in the Active Voice. We find in *Norfolk*, Earl *Ralf* held ſuch Lands, *Quando ſe foris fecit*; but more particularly in *Cambridgeſhire* in *Wardune*, *Hardwin* holds of *Richard*'s Anceſtors, but *Ralf Waders* held it *Die quo deliquit contra Regem*: all which would never have been inferred, could this King have taken away Mens Lives and Eſtates without any colour of Law or Juſtice. And therefore you may find in all the Hiſ-

J. A. A. pag. 100, 101.

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torians of his time, that after the great Plot wherein ſo many *Norman* as well as *Engliſh* Lords were concern'd, and for which *Roger* Earl of *Hereford*, and *Ralph* Earl of *Norfolk* and *Suffolk*, both *Normans*, had conſpired with Earl *Waltheof*, and other *Engliſh* Lords, to call in the *Danes*, and diſpoſſeſs the King; yet they were convicted by a legal Trial of their Peers, and ſuffered death for it. So that in this he diſtributed equal Juſtice to the *Normans* as well as the *Engliſh*, who thereupon forfeited all their Eſtates; and yet notwithſtanding this, there were ſome native *Engliſhmen* ſtill left, who tho they had been in Arms againſt the King, at the beginning of his Reign, yet were nevertheleſs reconciled to him, and reſtored to their Eſtates: As for example, "*Edric*, "ſirnamed the *Foreſter*, who, as *Florence* of *Worceſter* tells us, was reconciled "to King *William*, and accompanied him into *Scotland* ſoon after:" as alſo *Hereward*, the Son of *Leofric*, Lord of *Brunne*, who having loſt his Eſtate, and being outlawed (as *Ingulph* tells us) "took Arms againſt King *William*, "and joined himſelf with thoſe in the Iſle of *Ely*; and yet, after divers great "Battels, as well againſt the King as his Commanders, at length having "obtained his Inheritance by the King's Allowance, he finiſhed his days in "peace." And now here were two conſiderable *Engliſh* Barons who ſtill enjoyed their Eſtates, notwithſtanding all King *William*'s Severity; and yet I do believe it will puzzle your Doctor to ſhew me their Names in Doomſday-Book: ſo that that Book alone is not, it ſeems, a certain Rule to diſcover what *Engliſhmen* were then Barons or Tenants *in Capite*.

Pag. 636.

Pag. 67, 68.

J. A. A. 105.

But admit all this to be true, as you your ſelf have repreſented it; can this King's Perjury to his Subjects, and Breach of all Laws, after ſo many ſolemn Oaths, give him a Right as a Conqueror over the Lives and Eſtates of his *Engliſh* Subjects; and that after he had ſolemnly renounced his Right of Conqueſt, by ſo many ſolemn Tranſactions with his Subjects, with whom you ſuppoſe he ſtill made War, after he had for ſo many Years laid down his Arms? At this rate I cannot tell when Subjects may be ſafe. For ſuppoſe ſome Kings that come to a Crown by a mixt Title, partly by Force, and partly by Right, take ever ſo many Oaths to maintain the antient Conſtitution of the Government, together with the Rights and Privileges of the People; 'tis but their ſaying afterwards when they have ſufficient Power, that they were forc'd upon them, and that they never deſign'd to keep them, and the Buſineſs is done, and they may then take away the Subjects Lives and Eſtates by this pretended Right of Conqueſt whenever they pleaſe. Nor does this only extend to the King himſelf alone, but to all his Heirs and Succeſſors, who claim under that Title, let them take ever ſo many Coronation-Oaths, or make ever ſo many Declarations to the contrary; ſince they all claim under the ſame divine Title of the Sword; that is, as you will have it, *receive their Crowns immediately from God*, and then can never forfeit them, let them tyrannize to the utmoſt degree imaginable; for you have provided them with two eaſy and pleaſant Excuſes, that all Promiſes are either broken or kept, and *ſtultum Sacramentum eſt frangendum*. And I cannot but ſmile to ſee what an excellent excuſe you have found out, for all the Breach of Oaths and Covenants of thoſe engag'd in the late Civil Wars, ſince they might very well plead they had ſo many Royal Precedents for ſo doing, as ſufficiently authoriz'd it; unleſs you will have that to be Perjury in Subjects, which muſt be a Divine Prerogative in Kings.

And therefore let me tell you, I am very glad for your own ſake, that there is no body here but you and I, ſince all the Company would have cried out, and ſaid, that this way of arguing were to make open War, not only upon all the Laws and Privileges of this Nation, but alſo to put the King and People in a ſtate of War againſt each other: for if he once declares by ſuch Overt-Acts as theſe of King *William*'s, that he will not be tied, either by his Coronation-Oath, or by any Laws he has made, I doubt their Oaths of Allegiance will not long bind them neither; and they will be very ready to reply, that whatever Power began, and is continued by Force and Violence, may alſo be caſt off by the like means: and when a King and his People are brought once into this State, it is eaſy to foretel what will be the Event; either he muſt turn out, or they muſt be all Slaves; and I wiſh it was not owing to ſuch Jeſuitical flattering Counſels as this, that the King firſt loſt the Affections of his People, and then his Crown; ſince Father *Peters* himſelf, with the reſt of the

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Jeſuits, and Arbitrary Miniſters of the Cabal, could never have inſtill'd worſe Principles than theſe; therefore I pray for the future either get better Reaſons, or keep thoſe to your ſelf.

But God be thanked, both King *James* I. and King *Charles* I. had much better Thoughts of the Laws and Liberties of the Nation, ſince the former hath ſolemnly declared in a Preamble to the ſecond Act of Parliament, in the firſt Year of his Reign, "That not only the Royal Prerogative, but the Peoples "Security of their Lands, Livings and Privileges, were ſecur'd and maintain'd "by the antient fundamental Laws, Privileges and Cuſtoms of this Realm; "and that by the aboliſhing or altering of them, it was impoſſible but that "preſent Confuſion will fall upon the whole ſtate and frame of this Kingdom." 1 Jacobi. Cap. 2. Fol. 1157.

And his Son was of the ſame Opinion in his firſt Declaration at the beginning of the late Wars: "The Law (ſays he) is the Inheritance of every Subject, "and the only Security he can have for his Life and Eſtate; and the which being "neglected, or diſeſteemed (under what ſpecious ſhew ſoever) a great meaſure of Infelicity, if not irreparable Confuſion, muſt without doubt fall "upon them." Pag. 28.

M. If I had no Love at all for the Government and Liberties of my Country (as I thank God I have a great Affection for both) yet ſhould I not have the Impudence to contradict the Senſe of two Kings and a Parliament; neither have I ſo little Value for thoſe things which are the Foundations of our Happineſs, as to deſire they ſhould be ſacrific'd to an arbitrary Power; nor on the other ſide have I ſo great a Value for them, as to endeavour their Preſervation by Rebellion, and depoſing the King, which ſince I look upon as altogether unlawful, we are then to follow the Apoſtle's Rule, and not do Evil that Good may come of it. But as for what I have urged in excuſe of the Conqueror's Perjury, and Breach of Laws, I confeſs I have ſaid more than the matter will well bear; but I hope you will excuſe it, ſince I confeſs the Argument is none of mine, but the Doctor's from whom I borrowed it, and I did not conſider the bad Conſequences of it: yet this much I muſt ſtill freely affirm, that neither King *William* the Conqueror, nor his preſent Majeſty, who is his Heir by an Hereditary Right of Succeſſion, either could then, or can now at this day be lawfully reſiſted, much leſs can be depoſed, or can forfeit their Royal Dignity for any Male-Adminiſtration or Tyranny whatſoever.

F. Pray give me your Reaſon for that, ſince I think you may be very well ſatisfy'd, that this King's Title by Conqueſt from King *William*, his Anceſtor, can ſignify nothing, tho I ſhould grant the utmoſt you can demand: and therefore tho I am as much againſt Rebellion and depoſing of Princes as you can be, and doing of Evil that Good may come of it; yet the queſtion remains ſtill to be decided between us, whether that Reſiſtance I maintain be Rebellion or not, and whether it be Treaſon to deny Obedience to a Prince, who hath done his utmoſt to loſe the very name of King, by not obſerving thoſe Conditions, on the performance of which he can only maintain his Royal Dignity. Now ſince I think I have fully proved the two Points I undertook, *viz.* both that of the King's forfeiting the Crown in the Caſes I have put, as alſo the falſity of the matter of Fact, whereby you would maintain, *that the King has an indefeaſible Right to the Crown of this Realm, as an abſolute Monarch by Conqueſt:* ſince you decline arguing this Point any farther, becauſe you find it is not to be maintained, pray let me know what other Reaſons you have why you cannot come over to my Opinion.

M. Tho I am not ſatisfied, but that a great deal more may be farther urg'd by thoſe who are better vers'd in this Controverſy, to prove that his Majeſty hath an unforfeitable Right to our Allegiance by the Conqueſt of King *William* and his Predeceſſors; yet I ſhall not now inſiſt any longer upon that Title, which tho our Kings have by ſo many gracious Condeſcenſions to the People of this Nation, ſeemed to wave, yet have they never renounced it as I know of: but ſince his Majeſty was ſettled in the Throne as an abſolute and lawful King, without any Competitor, by a long Series of an Hereditary Succeſſion of above ſix Hundred Years ſtanding, and confirmed by the Oaths of Allegiance of the People of this Nation both to him and his Anceſtors, he is not only our King by the Laws of Man, but God alſo; to whom, and not to the People,

he owes his Crown; and can therefore neither forfeit it, nor be accountable to them for it: and when you can prove the contrary, you may then convince me to be of your Opinion.

F. We have already partly argued this Point at our third and fourth Diſcourſes, concerning the Lawfulneſs of Reſiſtance; but ſince perhaps you may have ſtill ſomewhat farther to urge upon ſo important a Queſtion, I deſire to hear the utmoſt you can ſay, to prove that Kings owe their Power to none but God, and therefore ought never to be reſiſted, neither can forfeit their Crown upon any pretence whatſoever: and therefore pray appoint me ſome other time when I may wait on you again, and fully diſcuſs this Point, ſince it is now very late.

M. I am ſorry I cannot appoint you any certain time; for ſince I ſee ſo great a Confuſion reigns every where, and that there is like to be no Term, and conſequently no Buſineſs for Men of my Profeſſion, I am reſolv'd to retire for two or three Months into the Country, till I ſee things a little better ſettled than they are at preſent: and I heartily wiſh that the Convention (which I hear is like to meet in ſome time) may endeavour the Peace and Settlement of the Nation, by ſending for the King and the Prince of *Wales* out of *France*; ſince I do not deſire any more Conqueſts, nor the Government of a foreign Prince, as long as we have a lawful King of our own, who will govern us again if he might: but as ſoon as I return to Town, you ſhall be ſure to know it; in the mean time I am your Servant.

F. I am yours, and wiſh you a good Journy.

Bibliotheca Politica.

DIALOGUE XI.

I. In what Senſe all Civil Power is deriv'd from God, and in what Senſe it may be alſo from the People.
II. Whether his Preſent Majeſty King *William*, when Prince of *Orange*, had a juſt Cauſe of War againſt King *James* II.
III. Whether the Proceedings of his Preſent Majeſty, before he was King, as alſo of the late Convention, in reſpect of the ſaid King *James*, are juſtifiable by the Law of Nations, and the Conſtitution of our Government.

F. DEAR Sir, you are welcome to Town, you have been abſent a great while; and indeed I wonder how you could ſtay away ſo long, when ſuch great things as the King's Abdication, and placing his Son and Daughter in the Throne, have been tranſacted.

M. I thank you kindly, Sir, but yet I muſt tell you, that I have been ſo little ſatisfy'd with what your Convention has done in theſe matters, that the very hearing of it hath been a great Affliction to me; and it would have certainly been a much greater, had I been upon the place, and ſeen ſuch horrid things as the Depoſition of a King, the diſinheriting of his right Heir, and the ſetting up the Prince and Princeſs of *Orange*, who certainly could have no right to the Crown as long as the King lives, nor yet after his Death as long as the Prince of *Wales* is in being.

F. I confeſs theſe are very high Charges if they would hold; but if you pleaſe to conſider the Hypotheſis I propoſed at our laſt Meeting, That the King had by Breach of the Original Contract made between his Anceſtors and Predeceſſors, and the People of this Nation, to obſerve the Fundamental Laws and Conſtitutions of the Kingdom, forfeited his Right to the Crown; all that hath been done in this great Affair, I ſuppoſe may be very well maintain'd and juſtify'd, from the neceſſity of the thing, and of maintaining the Fundamental Conſtitution of the Government. And therefore pray give me leave to put you in mind how far I have proceeded in the Proof of this Aſſertion.

Firſt, I have made out that the King of this Realm is not the ſole ſupreme Power thereof, neither ever was ſo, from the very Inſtitution of Kingly Government in this Iſland.

Secondly, I have alſo prov'd that the King, not having the ſole Power, muſt hold that ſhare thereof which he enjoys, upon this imply'd or tacit Condition, That if he uſurp what does not belong to him, and the People do aſſert their Right by oppoſing his unjuſt Violence and Uſurpations, and that he ſtill obſtinately perſiſts in this Violation, he thereby loſes and forfeits not only that part of the Power which he ſo unjuſtly uſurped, but alſo his own too: and for this I gave you the Authority of the Learned *Grotius* at our laſt Meeting.

Thirdly, I have alſo anſwer'd your main Argument of King *William* the Conqueror's obtaining by the Sword, and Conqueſt of King *Harold*, an abſolute Right, and unlimited Power for himſelf and his Succeſſors deſcended from him, over the People of this Kingdom; for I think I have ſufficiently made out, that King *William* had no other Right to the Crown of *England* than by the Teſtament of King *Edward* the Confeſſor, and the Election and Recognition of the People: and this I have prov'd from the unexceptionable Authorities of the beſt Hiſtorians of that time. So that if he afterwards acted otherwiſe, and contrary to his Coronation-Oath, it was not as a lawful King, but as a Tyrant and an Uſurper on the Rights and Liberties of the People, and he could not by his own unjuſt Act acquire any lawful Power ſo to govern this Kingdom; and therefore whatever Title King *William* or his Succeſſors can pretend to, it muſt be by virtue of the Election of the firſt King of the *Saxon* Line, from whom all the Kings of *England* ſince *Henry* I. are deſcended, and conſequently are oblig'd to hold the Crown under the ſame Conditions on which it was firſt confer'd. And tho I grant, that ever ſince the Reign of *Edward* I. the Crown has been no longer claim'd by Election, but by Succeſſion of him that really was, or elſe was preſum'd to be the Right Heir; yet this different way of acquiring the Crown does not at all alter the condition or manner of holding it, ſince our Kings have always after that time, as before, been tied to the ſame, or rather ſtricter Terms in their Coronation-Oaths, to obſerve and keep the Laws and Cuſtoms of this Realm; and alſo that the Power of the Great Council of the Kingdom or Parliament making Laws, raiſing Taxes, and redreſſing of Grievances ariſing from the unjuſt Exerciſe, and illegal Encroachments of the King's Prerogative, hath been exerted ever ſince the Crown became ſucceſſive, as much as ever it was before.

Laſtly, I think I have ſufficiently made out that King *James* hath violated the fundamental Conſtitution of the Kingdom, in thoſe ſeveral Inſtances I have already given, and am alſo ready farther to make it out if you require it; ſo that this being the Caſe, I can ſee no reaſon to the contrary, why the Crown or Legal Authority ſhould not become forfeited to the People, who at firſt confer'd this Power on the firſt King of the *Weſt-Saxons*.

M. I muſt confeſs you have done your endeavour to prove thoſe Aſſertions you have now laid down, but I am not yet ſatisfied that you truly have done it. But however, not to run into unneceſſary Diſputes and Repetitions of what has been already argued, and which I ſee you are too obſtinate to recede from, I ſhall now only oppoſe what you laſt aſſerted concerning the Crown's being forfeited to the People upon the King's pretended Breach of the Original Contract: for beſides the abſurdity of making the Crown forfeitable to the People, who are and ever were Subjects, and not Princes or Governours; whereas all Forfeitures ſtill ſuppoſe a Right in the Perſons who are to take it as ſuperior to the Party forfeiting; there is alſo a greater Error and Miſtake in your ſuppoſing all Civil and Legal Power to be deriv'd from the People, and by them confer'd upon their Kings or Governours: whereas the Scriptures plainly affirm, and all Divines ſo interpret them, that all Civil Power and Authority is wholly from God, and not from the People, who even in elective Kingdoms, tho they may name and deſign the Perſon whom they will have to be their King, yet is the Power wholly from God, who alone hath right to govern Mankind; and therefore as the People do not confer the Power, ſo neither can it be forfeitable to them from whom it was never deriv'd: and ſo much I told you at the Concluſion of our laſt Meeting, tho I had not then time fully to urge this Argument, as now I have. And this will preſs the more upon you, becauſe you your ſelf have already granted at ſeveral Meetings, that all Civil and Regal Power is deriv'd from God, and not from the People;

and

and therefore your Notion of a Prince or Monarch's forfeiting to them, is wholly falſe and precarious.

F. If this be all that you have to object againſt our Aſſertion of the King's forfeiting his Royal Authority to the People, I think I can eaſily anſwer thoſe Objections: for as to the firſt Abſurdity which you lay to our charge, how an Authority can be forfeited by a King or Superior to his Subjects or Vaſſals, the Abſurdity lies on your ſide; for I do not ſuppoſe this Forfeiture to be made to the People as Subjects, but to them conſider'd as a Community of Maſters of Families, and Freemen; who as the Deſcendants and Repreſentatives of thoſe who made the firſt King upon a certain Contract or Condition, upon the Non-performance of this Original Contract, do thereupon ceaſe to be Subjects, as a Servant ceaſes to be ſo, and becomes again *ſui juris*, upon his Maſter's Non-performance of the Bargain made between them: and ſo this Authority thus forfeited, returns to the Community of Maſters of Families, and Freemen, who once confer'd it upon the firſt King. Nor needs this Forfeiture any more ſuppoſe a Superiority, in the Perſons who are to take it, over the Prince that commits it, than when by the Law of *England* a Tenant for Life aliens in Fee, he in reverſion may immediately enter upon the Eſtate as forfeited to him, tho the Perſon that held it was perhaps his own Father. Vid. Coke *upon* Littleton, *p.* 251.

M. But is not this then to recede from your former Conceſſion, whereby you grant that Civil Authority is derived from God, and not from the People at all? whereas you now ſuppoſe them the only Original or Fountain of Civil Authority, and from them to be derived to all Princes and Monarchs.

F. This Difficulty wholly proceeds from your not rightly underſtanding the manner of God's conferring Civil Power or Authority upon thoſe that exerciſe it. For the better clearing of which Difficulty, let me ask you two or three Queſtions: Firſt, pray tell me whether you are ſtill of the opinion, that Monarchy is ſo much of Divine Inſtitution, as that no Government but that may be lawfully inſtituted by Men?

M. I will not now affirm, that Monarchy is of Divine Right; but this much I may ſafely aver, by what we can find in Scripture, that God inſtituted no ſort of Government but that; and he did not make *Saul* or *David* to be only like thoſe equivocal Kings, who might be depoſable at the Will of the Eſtates, but conferred part of his own Divine Power upon them, without any Conditions or Limitations whatſoever: but as for thoſe Governments called Commonwealths, tho without doubt they are not of Divine Inſtitution, yet certainly the power of Life and Death, which they exerciſe, is wholly from God; ſince, as I have already ſaid, a Man, not having power over his own Life, cannot confer that upon another which he had not in himſelf.

F. Well, I am glad we are ſo far agreed, that Commonwealths are endued with real Authority or Majeſty as well as Monarchs, and that from no leſs Author than from God himſelf; ſo that whatever you have ſaid concerning God's Inſtitution of no other Government than Monarchy, is either not true, or not to the matter in hand: for in the firſt place, I have already proved at our third Meeting, that the firſt Government God inſtituted among the *Jews*, was an Ariſtocracy under *Moſes*, *Joſhua*, and the Judges, reſerving the Kingly Power over them to himſelf. And tho it is likewiſe true, that God diveſted himſelf of great part of this Kingly Power, when he anointed *Saul* King; yet God's Inſtitution of Monarchy among the *Jews* does not render it unlawful for other Nations to inſtitute ſuch other ſorts of Government, as may beſt ſute with the Genius of the People, and the publick Good and Safety of the whole Community. But as for your Argument, whereby you would prove the neceſſity of all Civil Powers being derived from God, becauſe otherwiſe they could not be endued with the power of Life and Death over their Subjects, I have ſufficiently taken off that difficulty at our ſecond Meeting, and ſhewn you, that a Man, in the State of Nature, has not only power over another Man's Life, but alſo over his own; not only to hazard it, but alſo to lay down or loſe it for ſome greater publick Benefit to Mankind: which is alſo acknowledged by the Apoſtle *Paul* himſelf, *For a good Man ſome would even dare to die.*

But further, to ſhew you the Abſurdity of this Principle, let me put you this Caſe: Suppoſe that a Kingdom or Commonwealth were ſo inſtituted at the firſt, that no Subject, or Freeman, ſhould ſuffer death for any Crime, how great

great ſoever; which that I do not ſuppoſe as a thing impoſſible, it was for divers Ages exerciſed in the *Roman* Commonwealth, wherein no Civil Magiſtrate could lay any greater Puniſhment upon a *Roman* Citizen, than Baniſhment or Deportation. And if that Copy we have of the Laws of King *William* I. be authentick, it is by the 67th Law in his Charter ordained, That no *Engliſh* or *French* Subject ſhould ſuffer death for any Crime whatſoever, but only be puniſhed either by pecuniary Fines, Impriſonment, or elſe by loſs of Eyes, Hands, Feet, or Members; which Law, tho I do not ſay was ever obſerved, yet it ſhews it was then ſuppoſed to be both poſſible and lawful. Now if this could be ſo, there would be no neceſſity of ſuppoſing the Authority of the Commonwealth of *Rome*, or of King *William* I. to have been derived from God, ſince they had renounced and refuſed the great Character thereof, *viz.* the inflicting capital Puniſhments; but if for all that, they ſtill continued to be lawful Civil Governments, then it is evident that this power of Life and Death is not that which alone conſtitutes a Civil Power, and makes it owe its Original to God.

Vid. Grot. Annot. in Mat. p. 125.

Vid. L. L. Will. 1.

But to return to what your Notion concerning this power of Life and Death hath made me digreſs from, pray let me ask you another Queſtion: After the Expulſion of King *Tarquin*, and before the Commonwealth of *Rome* was formed, where was the ſupreme Authority lodged?

M. Why, in the ſame Body it was afterwards, the People of *Rome*, comprehended under the *Patricians* and *Plebeians*, that is, the Nobility and Commons; who yet retained the power of Life and Death over thoſe of their own Children and Slaves, tho they communicated a great part of their Power to the Senate and Conſuls.

F. Very well: Was this Authority they ſo conferred on the Senate and Conſuls, the ſame which they themſelves could have exerciſed? Or was it any new Authority immediately derived from God, and created for that purpoſe?

M. I do not think it was any new created Authority, but only a part of their former Power, which they ſo made over to the Senate and Conſuls, ſince they reſerved one great part of it, *viz.* the Legiſlative Power, wholly in themſelves: but however this power which the Fathers of Families, and Freemen among the *Romans* had over the Lives of their Children and Slaves, as alſo over others who were declared publick Enemies, was derived wholly from God; yet there aroſe likewiſe a new Power which theſe Fathers of Families were not inveſted with before, *viz.* that of making Laws, as alſo of War and Peace: all which Powers were derived from God, for the common Good, and Defence of the whole People or Community.

F. Herein I alſo agree with you, but then mark what follows: it then plainly appears, that the natural Subject of Civil Authority was the Fathers of Families, and Freemen of *Rome*; and that what ſhare thereof was by them committed to the Senate and Conſuls, it was wholly perſonal, and as their Repreſentatives. This being ſo, pray anſwer me another Queſtion: When the Senate and People of *Rome* did afterwards confer their whole Power upon the *Roman* Emperors by that Law (called in your *Inſtitutions*, *Lex Regia*) was there then created or produced any new Authority from God to the firſt Emperor? Or was it the ſame Authority or Majeſty which the Senate and People were endued with before? For either it muſt be the ſame, or elſe God muſt create a new parcel of this Royal Majeſty or Authority wherewith to endue this firſt Emperor: which if you ſuppoſe, I can ſhew you a great many Difficulties and Abſurdities that will follow from this Opinion; for then I might ask you, whether this Royal Majeſty be like the Stoicks *Anima Mundi*, whoſe Parts are diſtributed among all the Kings in the World? or whether each King has his particular Majeſty to himſelf? or whether the King dying, his Majeſty alſo dies with him? or whether it exiſt without him, as the Soul does when ſeparated from the Body, and by a certain kind of Metempſychoſis, is transferred to the new Monarch?

M. I ſhall not ſtick at preſent to affirm, that this Authority or Majeſty of the *Roman* Emperors was originally derived from God, tho not immediately, but by the Mediation of the People of *Rome* as his Inſtruments, eſpecially ordain'd for the Derivation of this Imperial Power.

F. Well

F. Well then, I ſee you and I are at laſt agreed; for I ſuppoſe all Civil Power to be ſo derived from God to the People, and by them, as an inſtrumental Cauſe, conveyed to the Perſon whom they agree to make their King. But if this were ſo in the *Roman* Commonwealth, why are not all the reſt of the Nations of the World indued with the like Privilege; ſo that no Man may juſtly make himſelf King over them without their Election, or Recognition at leaſt?

M. Perhaps in thoſe Nations where the People have, from the firſt Inſtitution of the Government, retained the whole Civil Power in themſelves, or elſe by the Extinction of the Royal Family they became poſſeſſed of it; this Power may afterwards by them be transferred or made over to one ſingle Perſon or more: but this can by no means hold in divers other Caſes, where God immediately beſtows a Civil Power or Authority without any Conſent of the People, as it is in the caſe of Kingdoms acquired by Conqueſt in a juſt War, (for as to unjuſt Wars or Conqueſts, I freely own they confer no Right at all.) But ſince you will not, I ſuppoſe, deny that ſuch a rightful Conqueſt confers an abſolute Power on the Conqueror, over the Lives and Eſtates of the Conquered, as alſo an Obligation in them to ſubmit to and obey the Conqueror; hence muſt ariſe a new Civil Power, without any Conſent of the People intervening: which Authority, ſince no Man can confer it upon himſelf, muſt neceſſarily be immediately conferred by God; ſince, as I ſaid before, the People are only paſſive, and have no hand at all in the conveying of it. And this is the more remarkable, becauſe I ſuppoſe you will not deny, but that where one Kingdom or Empire has owed its beginning to the Election or Conſent of the People, I could name ten that have begun from Conqueſt: So that it is evident, the People are never, or very rarely, the efficient Cauſes of Civil Power.

F. Tho this Queſtion concerning Conqueſt does not immediately concern our Kings, who, as I have already proved, do not owe their Regal Authority to Conqueſt, but to the Election and Conſent of the People; yet ſince the Title to a great part of our King's Dominions begun at firſt from Conqueſt, I ſhall now ſay ſomething of it. Firſt then, you grant that only Conqueſt in a juſt War can confer a Right to the People's Obedience; and therefore ſince the greateſt part of the Governments have commenced from unjuſt Conqueſts, it will therefore follow that the Right of ſuch Princes to thoſe Kingdoms and Territories ſo unjuſtly acquired, could not owe its Original to Conqueſt, but either to a long Poſſeſſion, or the Extinction, or at leaſt the Dereliction of the right Heirs, together with the Conſent of the People to confirm their Titles. So that it is not only my Opinion, but that of the moſt learned Writers in your own Faculty, ſuch as *Grotius* and *Puffendorf*; that Conqueſt alone, tho in the juſteſt War, can confer no Right over a Free People without their Recognition or Conſent: I have added *of a Free People*, becauſe I much doubt, upon the Conqueſt of a Kingdom or Territory (for example) where the People do own themſelves mere Slaves to their Monarch; whether their Conſents be at all neceſſary or not, ſince they fall to the Victor as the moveable Goods of the Prince conquered: but then the Power he has over them, is not properly a Civil Authority, but that of a Lord over his Slaves. And hence it is that in all Kingdoms and Territories, obtained by Conqueſt among us in *Europe*, Princes do not think themſelves to have any Title to their Subjects Allegiance, before they have acknowledged them for their lawful Sovereigns, by ſome publick Act either of the Eſtates or Repreſentatives of the Kingdom, or elſe by the particular Oaths of all the chief Subjects or Inhabitants of thoſe Places.

M. I ſhall not at preſent diſpute this Point any farther with you, but yet there remains one great difficulty behind, concerning the manner of God's conferring this ſupreme Power upon Princes and States: For you your ſelf have already granted, that the power of Fathers and Maſters of Families is not of the kind, but ſomewhat ſpecifically different from Civil Power or Authority; and if ſo, ſince they had not this Civil Power in themſelves, I cannot ſee how they could confer it upon another, ſince *nemo dat quod non habet*: And therefore there ſtill ſeems a neceſſity of God's conferring a new Power upon that Prince, or upon thoſe Perſons whom they ſhall pitch upon to rule over them.

F. I hope I ſhall as eaſily remove this Difficulty, if you will pleaſe to conſider the manner how God confers this Civil Authority upon Men, which is certainly by natural Means, and is to be found out by natural Reaſon, without any Divine Revelation; ſince Civil Government was inſtituted, and Men were obliged to obey it, long before the Old Teſtament was written. But the true Original of it is thus to be traced: Firſt, It is certain, that right Reaſon ſufficiently taught Mankind when it began to multiply, and that they were ſenſible, from the great Wickedneſs and Corruptions of Mens Natures, that their common Peace and Safety could not be well maintained, unleſs Civil Governments were inſtituted; which could not ſubſiſt without a ſupreme Authority placed in ſome one or more Perſons. This being a Dictate of the Law of Nature or right Reaſon, and ſo highly conducing to the Good of Mankind; it muſt needs owe its Original to God, the Author of all Truth, and the Giver of every good and perfect Gift. From whence it follows, that not only the Inſtitution of Commonwealths themſelves, but alſo the ſupreme Power with which they are indued, does not proceed merely from Men, but from God's Command, expreſt by the Law of Nature or right Reaſon: So that the ſame Legiſlator, who firſt preſcribed Civil Society, alſo preſcribed the Peace and Order of that Society. Now a ſupreme Civil Authority, either in one or more Perſons, is the Life and Soul thereof, without which it cannot live or ſubſiſt.

Vid. Puffendorf de Jure Gentium, l. 3. c. 7.

But it is certain that thoſe things are not only ſaid to proceed from God, which he immediately inſtitutes, without any human Act intervening; but thoſe alſo which Men by the Conduct of right Reaſon, and according to their preſent Occaſions and Neceſſities, have introduced to fulfil that Obligation that lay upon them, to promote the common Good and Safety of Mankind. And ſince in a promiſcuous ungoverned multitude, that great Law of Nature, which preſcribes the publick Peace and Concord of Mankind, cannot well be exerciſed (the Unrulineſs of Mens Paſſions conſidered) nor be maintained without ſome ſupreme Civil Authority to keep Men in order; it is plain that God, who enjoin'd Men this, does alſo command that Civil Societies ſhould not be only inſtituted, but their Authority alſo obeyed, as derived from himſelf, and as the neceſſary means of obtaining this great end of all the Laws of Nature, the common Good and Safety of Mankind. And hence it is that he hath not any where preſcribed or inſtituted any particular Form of Government, but leaves the choice of it to the particular Genius and Temper of each Nation and People.

This being ſettled, your Objection is eaſily anſwered, How Civil Power can be conferred, without an immediate conferring of it from God, ſince the People in the State of Nature had it not before: which proceeds from your not conſidering, that this ſupreme Authority is not like the Soul of Man, an immaterial Form, that gives Knowledg and Underſtanding to the Body, and may be ſeparated from it; but is only a moral Quality, which may be produced by the mutual Conſent of thoſe that inſtitute it, as the productive Cauſe thereof, tho they had it not formally in themſelves before; juſt as from many Voices ſinging in Conſort, tho in different Tones, there ariſes a Harmony, which was not in any ſingle Voice alone. Therefore ſince Civil Authority proceeds from the Non-Reſiſtance of the Subjects, and their Conceſſion that the ſupreme Powers ſhould freely diſpoſe of their Bodies and Goods for the publick Safety, it plainly appears, that in each particular Maſter of a Family and Freeman there lay (tho hidden and diſperſt) the Seeds or Rudiments of ſupreme Power, which by mutual Compacts did afterwards grow into a perfect Civil Authority. And thus not only many Maſters of Families, and Freemen, may combine together for their mutual Safety to erect a Commonwealth, by appointing one or many Men to rule over them for their mutual Safety; but it is not impoſſible, but that from the Government of a Maſter of a Family, having many Villages and Slaves under his power, there may ariſe a perfect Kingdom: for tho paternal Power does chiefly reſpect the Education of Children, and that of a Maſter, the Government of Servants, for his own advantage; yet is there not ſo great a diſtance between the Power of a Maſter of a Family and Civil Authority, that there can be no paſſing from one to the other, without a new Authority immediately created by God for that purpoſe.

For

For ſuppoſe a Maſter of a Family, having a numerous Train of Children and Servants, ſhould permit both of them, by way of Emancipation or Manumiſſion, to enjoy ſuch a Portion of Lands, or other Goods to their own uſe, as alſo to govern their own private Families and Affairs as they ſhall think fit, provided they will ſtill obey him as their Head and Governor, and contribute the utmoſt Aſſiſtance of their Lives and Fortunes for the publick Safety; I cannot ſee any thing that would be wanting to the making ſuch a Maſter of a Family a lawful and abſolute Prince, provided he was endued with ſuch a Power as to be able to protect them: yet all this while, without ſuppoſing any new Divine Authority to be infuſed by God upon his Acceſſion to this Dignity.

M. I confeſs you have given me a more exact account concerning your Senſe of this matter than ever I had before; and therefore I ſhall not further diſpute this Point with you: only let me tell you, that upon this Hypotheſis of yours is founded that deſperate Opinion concerning the real Authority or Majeſty of the People, which the Commonwealths-men ſuppoſe ſtill to reſide in the diffuſive Body thereof, after the Government is inſtituted, and by virtue of which they ſuppoſe there ſtill remains a power in them to call their Kings or Governours to an account, and to puniſh them for Tyranny, or any other ſuppoſed Faults, againſt the fundamental Conſtitution of the Government, or of the Original Contract, as thoſe of your Party are pleas'd to term it.

F. Well then, to let you ſee I am none of thoſe Commonwealths-men who maintain any ſuch deſperate Doctrines, here I do freely own, that where the People have parted with their whole Power, either to a Monarch, or elſe to a ſupreme Council or Senate, from thenceforth they have nothing at all to do to call ſuch Governours to an account, or to puniſh them for the higheſt Tyranny or Oppreſſion they can commit. The utmoſt I have allowed as lawful to be done in this Caſe, in all the Converſations we have had, is no more than this; That the People, in caſe they ſee themſelves like to be deſtroyed and ruined both in their Perſons, Conſciences, and Eſtates, may, even under the moſt abſolute Governments, ſtand upon their own Defence, and prevent their being thus totally ruined and enſlaved; and may alſo caſt off all Allegiance to ſuch Powers, in caſe they refuſe to treat them with greater Juſtice and Moderation for the future. But as for ſuch limited or mixt Governments as ours are, where the People have ſtill retained a ſhare in the Legiſlature, and alſo in the raiſing of publick Taxes; yet ſince the King is by Law exempted from Puniſhment, or rendring any account of his Actions either to the People or their Repreſentatives, the utmoſt that I contend for, is, That ſince the King receives only a limited Power of ruling according to ſuch and ſuch Laws, and will uſurp that ſhare of the Government that does not belong to him; in ſuch Caſes, if he refuſe to amend, then they may reſiſt his Officers and Miniſters, nay himſelf in Perſon, in the execution of ſuch violent and illegal Actions. And if he ſtill perſiſt, and refuſe to amend, that then at laſt they may proceed to declare, that he hath forfeited his Crown or Regal Right of ruling over them; and in ſuch caſe I hold that it again devolves to the People, from whom it firſt proceeded. And that this is no new Doctrine, I have the Authority of *Forteſcue* on my ſide; who, in his Treatiſe *De Laudibus Legum Anglia*, after having ſhewn that all political or limited Governments proceeded at firſt from the Conſent of the People, proceeds thus, addreſſing himſelf to Prince *Henry*, Son of King *Henry* V. (for whom he compoſed this Work) *Habes ex hoc jam, Princeps, inſtitutionis politici Regni formam, ex quâ metiri poteris poteſtatem, quam Rex ejus in Leges ipſius aut Subditos valeat exercere. Ad Tutelam namque Legis, ac Subditorum, eorum Corporum & Bonorum, Rex hujuſmodi erectus eſt, & ad hanc Poteſtatem a Populo effluxam ipſe habet, quo ei non licet poteſtate aliâ ſuo Populo dominari.* From whence we may obſerve, that he calls the Government of this Kingdom, not *Regnum* ſimply, but *Regnum Politicum*, that is, a politick or limited Kingdom, in oppoſition to *Regnum Abſolutum*. This he calls a Power flowing or proceeding from the People; and if it thus proceeds from the People, it muſt certainly return to them again upon the failure of the Conditions to be performed on the King's part. Nor does this ſuppoſe any real Majeſty or Authority in them who take this Forfeiture, any more than it does ſuppoſe it in the People, according to your own Hypotheſis, when Cap. 13. p. 32.

the Civil Authority does again devolve to them upon the death of a King without lawful Heirs.

M. I do now very well understand your Hypothesis, but I think Princes are not thereby in a better Condition by being thus accountable to, and unpunishable by the People, but that they are rather in a much worse; since you say they may resist, nay kill them, when they are once entered into a State of War against them. For where Princes are accountable to their People or Senate, they may then be admitted to be heard to make their Defence, in case of any Oppression or Misgovernment laid to their charge; as the King of *Poland* may at this day, to the great Assembly of Estates or Dyet of the Nation: whereas in the case of the King, as you have put it, tho he is not accountable to the Parliament, yet he is still liable to that which is more dangerous, *viz.* to be judged, censured, and declared forfeit by every inconsiderable Fellow of the Rabble, on pretence of violating this Original Contract, and having broken the fundamental Constitution of the Government, and so shall be condemned unheard, and perhaps without any just Cause: so that I think a Man had as good be a Bearward, as a King upon such Terms.

F. The Men of your Principles I see are not to be pleased, unless Princes may do whatever they have a mind to without controul, or any Man's judging or opposing the Illegality of their Actions: For if a Parliament takes upon it self to judge of the King's Actions, this is calling their Princes to an account, and a thing against the Laws of the Land, as also that of Nations; if the whole Body of the People take upon them to judge when he has violated the fundamental Laws of the Kingdom, and broken the Original Contract, and thereupon resist him, this is making the King liable to be judged and censured by every mean Fellow of the Rabble. But to let you see that both judging and disobeying the King's Commands, if contrary to Law, is not a thing of such dangerous Consequence as you would make it, appears by the late Petition of the seven Bishops, wherein they take upon them to judge, that the King's late Declaration of Liberty of Conscience being against several Acts of Parliament, they cannot with a safe Conscience publish it, or agree to the reading of it in the Churches. Now I desire to know whether this be not a making the King's Actions liable to be judged and censured by every one of the Rabble, since these Bishops acted thus, neither as Privy Counsellors, nor as Peers in Parliament? For by the same Right by which they took upon them to make this Declaration, by the same Right, not only every Curate of a Parish, but also every Layman in *England*, was free to judg of the King's Breach of this Law, and consequently of denying Obedience thereunto; which Disobedience, if it once prove general, will quickly make the King's personal Commands wholly insignificant. So that it seems it is not the Peoples judging of the Illegality of the King's Actions and Commands, which is the thing you find fault with, since when these Bishops acted thus, all those of the Church of *England* highly commended it: So that it seems it is not the bare Censuring and Disobedience that makes it a Crime, but it is the resisting such violent and illegal Orders and Commands, and at last declaring that Power void and forfeited by which they were made, that sticks in your Stomach: which is as much as to say, that this Judging and Disobedience in it self is no Crime; but the pushing it home, and doing it in such a way as that it may be mended for the future; tho this is never lawful to be done, but when things come to that extremity, that all milder Remedies are become ineffectual.

But to answer your Objections a little more closely, the Consequences of my Opinion are not so dangerous as you suppose them, if you will please to consider what I have already laid down at our last Meeting. As first, That this Resistance is never to be made, but when the violent Breach of the Laws becomes evident and undeniable, not to the Rabble alone, but to the whole Nation, that is, all sorts and degrees of Men; and as long as there is any Question about it, I acknowledg it is by no means to be used. And lastly, As to the declaring the Regal Power forfeited, this likewise is never to be done, but when the King becomes so obstinately resolved to pursue those evil and illegal Courses, as that he is utterly irreclaimable, and refuses all Propositions and Terms of amending or redressing them. Aud as to what you say,

that

that the King is hereby deprived of all means of justifying himself, or vindicating his Actions; that is not so, since if a War be once begun, he may do this either by Declarations, Messages, or Treaties, as King *Charles* I. did in his War with the Parliament; by which means he gained a great many both of the Nobility, Gentry, and Commonalty to his Party, who were before absolutely set against him. But if you will needs have a Parliament to judg and examine the reality of this Forfeiture, I so far join with you, that tho every private Man may first judge thereof, yet is it not become absolute, and an Act of the whole People, till the Estates of the Kingdom, as their Representatives, have by some solemn Vote or Declaration made it so.

M. Well, I see you do all you can to make the best of a bad Cause; but tho I think nothing of what you have said can give Subjects any Right to resist, much less to cast off all Allegiance to their natural Prince, yet I shall not now dispute this Point any longer with you, but will proceed to the Merits of the Cause, and shall let you see, that even upon your own Principles, the King has not been dealt withal in this whole Transaction, either like an Ally by the States-General of the *United Provinces*, or like a near Relation or a Son-in-law by the Prince of *Orange*, or like a King by his own Subjects. To begin with the States of *Holland* in the first place, it is apparent that they have acted treacherously with the King, and contrary to the last Treaty of Peace and Alliance, in furnishing the Prince of *Orange*, as their Captain-General and Stadtholder, both with Ships, Men and Mony, to make this late Expedition against *England*, without so much as ever declaring the Cause of their Quarrel, or demanding any Satisfaction, if any occasion of Difference had been given.

But the Prince of *Orange*'s dealing with the King his Father-in-law, has been much less justifiable: for, in the first place, he is not only guilty of the same fault with his Masters the *Dutch*, in beginning a War without ever declaring the Causes of it, or demanding any Satisfaction or Reparation if he had been injured, till it was too late to go back, and that his Fleet was ready, and the Army shipped for the Expedition; but what was more unkind from a Nephew and a Son-in-law, who had reason to expect all the Satisfaction which a King, an Uncle, and a Father-in-law could give: tho indeed, to speak the truth, the whole War was, in my Opinion, altogether unjust on the Prince's side, since his chief Pretences were to redress Grievances, and to re-establish the Bishops and Church of *England* with the Colleges in their just Rights, and also restore the whole Nation to the just execution of the Laws, by a Free Parliament and Privileges. Now I desire to know what the Prince of *Orange* had to do, either as a Neighbour or a Son-in-law, to concern himself with the Misgovernment of Affairs in *England*, much less to countenance and take the part of those many Malecontents and Traitors, who, after the Duke of *Monmouth*'s Rebellion, went over into *Holland*? So that upon the whole matter, I can find but one thing which he had so much as a pretence of making war about, if it had been real, *viz.* the pretended supposititious Birth of the Prince of *Wales*; and yet even for this he ought not to have made War, till such time as all reasonable satisfaction in this matter had been demanded and denied him; and that the next Parliament, which the King had before declared should meet in *November* last, had been either hindred from meddling in it, or that they had failed to make a due Enquiry into it. But if we look home——

F. Pray, Sir, before you come to consider what has been done here, give me leave to justify the late Proceedings of the States-General, and the Prince of *Orange* in this matter. First, As to the States, it is a very great Mistake, that they made this War upon the King in their own Names, or furnished the Prince of *Orange* with Ships or Men as their Stadtholder or General; they did it as he was a free Independent Prince, whom they looked upon to have a good Cause of making War against the King of *England*, as one they had great cause to believe was so far engaged in the *French* Interest, as instead of standing neuter in this War with the Empire, they every day expected when he would join with *France*, and declare War against them, as they had reason to fear by several angry Memorials which the *French* King's Envoy in *Holland* had not long before given them: so that indeed it was but according

to the Rules of Self-preſervation to begin firſt, eſpecially when it might be done without their appearing in it at all. But granting this War had been made in their own Names, it had been but a juſt return for what had been done to them before by the late King, who made actual War upon them, without ever giving them the leaſt notice, or demanding ſatisfaction for any Wrongs or Damages received; and this was the more juſtifiable, becauſe his preſent Majeſty, when Duke of *York*, was looked upon to have a very great hand in thoſe Counſels which begun that unhappy War, in which he himſelf ſerved as Admiral. But as to the Prince of *Orange*, there is much more to be ſaid in his Juſtification: for, in the firſt place, tho in ſome reſpects he was a Subject, by living under, and enjoying divers Lands and Territories, and Commands within the Dominions of the *United Provinces*; yet as he is Prince of *Orange*, he is a free independent Prince, and, as ſuch, has a Right of making War and Peace: and if ſo, all that is to be further enquired into, is, whether the Prince had any juſt cauſe of making war upon the King or not. Therefore to anſwer your firſt Objection againſt the Prince's making war upon an Uncle and a Father-in-law, without firſt demanding ſatisfaction, and then denouncing War if he could not obtain it; I confeſs this were a good Objection, if you could once prove to me, that the Prince could have been ſure to have had granted him whatever he could in reaſon demand, both in reſpect of the Church of *England*, the Security of the Proteſtant Religion, the Rights and Liberties of the Subjects of *England*, and his own particular Concerns in reſpect of the Prince of *Wales*. But whoever will impartially conſider the Terms that the Prince and King were upon juſt before his coming over, will find that he was not obliged to give the King notice of his Intentions, by firſt demanding ſatisfaction, and then denouncing War if it had been denied; ſince the King might then have joined his own with the *French* Fleet, and ſent for *French* Forces into *England*, and then all that the Prince could have done, in behalf of himſelf and the Nation, had been altogether in vain. And then tho I grant that ſuch ſatisfaction ought to be demanded in moſt Caſes, yet will it not hold in this; where if the Prince had ſooner diſcovered his Deſigns, the King might have eaſily prevented them. And how near this was to have been put in execution, may appear by this, That Succours were actually offered by the *French* King, and if they were refuſed by ours, it was partly becauſe it was too late for the *French* Fleet to be then put out, and partly out of a politick Conſideration, that beſides loſing the Hearts of his *Engliſh* Subjects, it might give the *French* ſuch a footing here, that they would not be eaſily gotten out again. But indeed it ſeems as if the old formal way of making war was quite out of faſhion; ſince *Charles* II. made war againſt the *Dutch*, and the King of *France* ſo lately againſt *Spain*, the Elector *Palatine* and the Emperor, without any Obſervation of thoſe Formalities.

But if we conſider the Grounds and Cauſes of this War, as they are ſet forth in the Prince's late Declaration, they may be reduced to theſe three Heads:

Firſt, The Reſtoration of the Church of *England*, with the Biſhops and Colleges to their juſt Privileges.

Secondly, The ſecuring the Rights and Liberties of the Subject from the Diſpenſing Power, and thoſe other Incroachments that had been made upon them by the partial Judgments of Popiſh or Corrupt Judges.

And, *Laſtly*, The Enquiry into the Birth of the Prince of *Wales*. In all which the Prince was ſo reaſonable, as to refer the Deciſion of theſe Differences to the Judgment of a Free Parliament.

Now as for the firſt of theſe, That the Prince as a Neighbour, and of the ſame Religion with us, might juſtly ſecure the Intereſt of the Proteſtant Religion here, and alſo redeem the Clergy from the Perſecution they lay under, is very evident; ſince it has always been held lawful for Princes to take the part and eſpouſe the Intereſt of thoſe of the ſame Religion with themſelves, tho Subjects to another Prince. Thus *Euſebius* makes it a good cauſe of War by the Emperor *Conſtantine* againſt *Licinius*, becauſe he perſecuted the Chriſtians living under his Dominions: So likewiſe in later Ages, Queen *Elizabeth* aſſiſted the *Dutch* Proteſtants of the *United Provinces*, and thoſe of *France*, againſt the Perſecutions and Oppreſſions they ſuffered from their own Princes;

as

as to the *French* Proteſtants, King *Charles* I. ſent a Fleet and an Army to their Aſſiſtance in 1627.

But as to the next Head, the Oppreſſions we lay under in reſpect of our Civil Liberties, the Prince had as great, or rather greater Right to vindicate theſe than the former. For *Bodin* and *Barclay*, tho they ſuppoſe it unlawful for Subjects to take up Arms againſt their Prince, tho ever ſo highly oppreſſed; yet they count it not only lawful, but generous and heroick for a neighbouring Prince, to reſcue injured and oppreſſed Subjects from the Tyranny of their Kings. So that if the King had by his diſpenſing Power, his levying of Taxes without Law, and taking away the Freedom of Elections for Parliament-men, almoſt totally diſſolved the Government, and brought it to the Condition of an Abſolute Monarchy, it was high time for the Prince to put a ſtop to thoſe Incroachments, both in reſpect of his own particular Intereſt, and alſo of the States, whoſe General and Stadtholder he is. Of the former, ſince if this Kingdom ſhould once become of the Popiſh Religion, by the means of a Standing Army, and thoſe other Methods that have been taken to make it ſo (granting the Prince of *Wales* to be truly born of the Queen) yet ſhould he happen to die, the Popiſh Faction here in *England* would in all likelihood debar the Prince and Princeſs of *Orange* from their lawful Succeſſion to the Crown; or at leaſt would never admit them but upon condition of eſtabliſhing of Popery and arbitrary Government in *England*: the former of which is as contrary to their Conſciences, as the latter is to their Principles and Inclinations.

So on the other ſide, if the Prince of *Wales* be not the Queen's true Son, the Prince and Princeſs of *Orange* had certainly a much greater Intereſt, as the preſumptive Heirs of the Crown, to demand ſatisfaction in that great Point, which ſo nearly concerned their Right of Succeſſion; for then certainly they might juſtly demand ſatisfaction, eſpecially when they deſired no more but to have this Buſineſs left to the Inſpection of the Eſtates of the Kingdom, as the only proper Judges of the ſame. For as to the Privy Council, who by the King's Command (tho without any Precedent) had taken upon them to hear and determine this matter, their Highneſſes certainly had no reaſon to be ſatisfied with it; ſince, beſides the incompetency of the Judges, the King himſelf appeared too partial and intereſted in the Affair, for them to ſit down by their Judgments. And as for what you ſay, that the Prince ought firſt to have tried, whether the King and Parliament would give him that ſatisfaction he demanded; this was very dangerous for him to hazard: for ſuppoſe the King would never have permitted this Affair to have been impartially inquired into by them, or that the Parliament had been (as it was very likely to be) packed and made up of Papiſts, Fanaticks, and Time-ſervers, who either would not, or elſe durſt not have examined this matter as they ought: his Highneſs had been then to play an After-game the next year, and what might have happened in the mean time, God knows; and therefore he had all the reaſon in the World, whilſt the *French* King's Arms were imployed in *Germany*, to demand ſatisfaction with the Sword in his hand. This is what I have to ſay in juſtification of his Highneſs's Arms, which if they are juſt on his ſide, I think I can as eaſily prove what has been done for his Aſſiſtance by the Nobility, Gentry, and Commons of this Nation, to have been ſo too.

M. I ſhall not any longer diſpute, whether the *Dutch* and the Prince of *Orange* may not make ſome fair Pretences for what they have done; ſince making War for Security, and by way of Prevention, is no new thing: tho I confeſs what you ſay, in reſpect of the Prince of *Wales*, had been a ſufficient cauſe of War, had there been any true grounds for that Suſpicion. But ſince there was no juſt cauſe given why his Highneſs ſhould ſuſpect his Birth not to be genuine, and that even in the preſent Convention it ſelf there could be no proof made to the contrary; I think it is now evident, that it was a wicked and unjuſt Calumny upon his Majeſty and the Queen, ſince he himſelf, in the laſt Paper he left behind him at his going away, *appeals to all that know him, nay even to the Prince of* Orange *himſelf, that in their Conſciences neither he or they can believe him in the leaſt capable of ſo unnatural a Villany, nor of ſo little common Senſe, to be impoſed on in a thing of ſuch a nature as that.*

But

But as for those Noblemen and Gentlemen, who have declar'd for the Prince of *Orange* since his Arrival, I think that they are no way to be justify'd; since granting them to have been satisfy'd, that the Prince's Demands were lawful and reasonable, yet sure they ought not to have taken up Arms on behalf of a foreign Prince, against their natural Sovereign: but if in their Consciences they had believed his Quarrel to have been just, the utmost they could have done, had been to have stood Neuters, without concerning themselves either with the one or the other Party; and then if the Prince had gain'd his point either by Arms or Treaty, they might have enjoy'd the good Effects of it, without breaking in upon the Church of *England*'s Principles of Passive-Obedience and Non-Resistance, and so many Acts of Parliament made to the same purpose. But as for those Officers and Soldiers, who basely and perfidiously deserted the King at *Salisbury*, and ran over to the Prince's Army with their Commissions in their Pockets, they cannot possibly be justified either by the Law of the Land, or that of Nations; since certainly they acted contrary to both.

F. Before I speak any thing concerning the Business of the Prince of *Wales*, give me leave to say something in justification of those Noblemen and Gentlemen you so highly accuse; and tho we discours'd something of this matter at our last Meeting, yet since you have again renew'd the Charge against them, I cannot but again vindicate them in what they have done. In the first place, pray call to mind, that it has sufficiently appear'd by the small Forces his Highness brought over with him, that he never intended to conquer this Kingdom, or impose any thing upon it, contrary to the known Laws and Customs thereof; and therefore, as appears by his Declaration, his chief hopes of Success against so numerous an Army, made up of the flower of three Nations, depended on that assurance he had of some considerable Assistance from the Nobility and Gentry of *England*, and perhaps from some of the Officers of the King's own Army; and that this was lawful in both of them, I thus prove: You may remember I made out at our last meeting but one, that when the Nation lay under any great intolerable Oppression, by reason of the Violation of their just Rights and Liberties; the Clergy, Nobility and Gentry thereof, did always look upon it as their Right and Duty to vindicate the same by a vigorous Resistance, when no gentler means could suffice. Secondly, I have prov'd that it neither was, nor could be the intent of those Oaths and Declarations made in the two first Parliaments of King *Charles* II. to deliver up their Lives, Liberties and Estates wholly to the King's Mercy, let him use them as he pleased; and if they did not, it must necessarily follow, that upon the King's Violation of their Religion, Liberties and Properties, they had still a Right left them to defend themselves from such Oppression and Tyranny. Lastly, "I have also prov'd (as the Convention also lately declar'd) that the "King by exercising his dispensing Power, by committing and prosecuting "the seven Bishops, by setting up an Ecclesiastical Commission contrary to Law, "by levying Mony by his Prerogative, without or contrary to expres Acts "of Parliament, and by raising and keeping up a standing Army in time of "Peace, commanded by Officers who had never taken the Test appointed by "the Statutes made for that purpose, and consisting of so many Popish Soldiers, who having never taken the Oaths of Supremacy and Allegiance, were "altogether uncapable of serving in his Majesty's Army; and by doing divers "other things contrary to the known Laws, Statutes and Liberties of this "Realm, too long now to particularize; had broken the Fundamental Constitution of the Kingdom." This being the Case, I desire to know how it was possible for the Nation to have a firm and settled Redress of these Grievances, without a Free Parliament? Or how it was possible to obtain such a Parliament (the late taking away of Charters and Regulation of Corporations consider'd) unless those Obstacles had been first remov'd? And how they could be remov'd, without some Force proportionable to what the King had raised to hinder it, I cannot tell. And therefore it is a very vain Project of yours, to suppose that those Noblemen and Gentlemen should have sat still, and not have declar'd themselves some way or other in this Quarrel; which is all one, as to say, they ought to sit still and see a generous Prince ruin'd, who had come in for their Redemption, and to have then expected a Remedy for all these illegal Violations and Oppressions, when the King had kill'd or destroy'd the Prince of

Orange

Orange and his Army, by his Majesty's yielding to all the same Conditions that the Prince had demanded. This indeed would have been not to be parallel'd any where but in a Romance.

But as for those Officers and Soldiers who you say deserted the King, and went over to the Prince from *Salisbury*; tho I grant they make a great noise, yet were they not a Thousand Men, Soldiers, Officers and all, (as I am credibly inform'd) which was but a small Number, in comparison with the King's whole Army: and yet these may very well be defended upon the same Principles with the former; for if the Violations of our Liberties were so great and dangerous, as I have now set forth, those Gentlemen were certainly oblig'd to prefer the common Good of the Kingdom, in the Preservation of their Religion and Liberties, before any private Interests or Obligations whatsoever, tho it were to the King himself: therefore it was more his than their fault, if they deserted him. And as for their going away whilst they were his Soldiers, and with their Commissions in their Pockets; I suppose you cannot expect that the King should have ever given them leave to quit his Service, or have accepted of their Commissions, if they would have surrender'd them, unless at the same time he had clapt them up in Prison for offering of it: and if then they were persuaded that it was their Duty so to do, it is but a Punctilio of Honour, whether they went away with their Commissions in their Pockets, or had left them behind them; since their going off was a Surrender of their Commissions, and a sufficient Declaration, that they could not with a safe Conscience serve the King any longer in this Quarrel. And you see that the Desertion of these few Men had such a fatal Effect, that it cast such a panick Terror upon the King, and the whole Popish Faction about him, as to make him run away to *London* without striking a stroke. But that the Prince of *Denmark*, with the Dukes of *Grafton* and *Ormond*, and Lord *Churchill*, were convinc'd of the danger this Kingdom was in, both in respect of their Religion and Liberties, appears by their leaving the King, and going over to the Prince, where they could never expect to be put into higher Places of Honour or Trust, than what they enjoy'd already under his Majesty: and therefore that Expression of the Lord *Churchill*'s, in his Letter to the King, is very remarkable; "*That he could no longer join with self-interested Men, who had fram'd Designs* "*against his Majesty's true Interest and the Protestant Religion, to give a pretence* "*to Conquest to bring them to effect*". And one would be very much inclin'd to believe so, considering the great number of *Irish* and *Scotish* Papists who have been brought over and listed here; tho with the turning out and disbanding of a great many *English* Officers and Soldiers out of several Companies.

But to come to the Business of the Prince of *Wales*, which you say was a mere Calumny, and an unjust Suspicion on the Prince's side: tho I will not affirm any thing positively in so nice a matter, since the Convention has not thought fit to meddle with it; I shall only say this much, that if there have been any Jealousies or Suspicions raised about it, the King may thank those of his own Religion, who were intrusted with the management of the Queen's Lying-in. For in the first place it look'd very suspicious to us Protestants, who do not put much Faith in the Miracles of the Romish Church, that immediately after the presenting of the Golden Angel to the Lady of *Loretto*, and the King's Pilgrimage to St. *Winifred*'s Well, the Queen after several Years Intermission, should again be with Child; and when she was so, should have two different Reckonings: which tho it may be forgiven young Women of their first Children, yet those who have borne so many Children as her Majesty, are commonly more experienced in these matters.

M. What is all this to the purpose? Was it not prov'd by many credible Witnesses, and those of the Protestant Religion, before the Privy-Council, that they were not only present in the Room when the Queen was deliver'd, but that they had seen Milk upon her Linen before her Delivery; and that they had also felt her Belly immediately before it, and found that her Majesty was big with Child, and ready to be deliver'd? and the Midwife swears that she actually deliver'd her. So that since every Person is to be presum'd to be the true Son of those Parents that own him for theirs; so nothing but a direct Proof to the contrary, and that by undeniable Evidence, ought to make any

Man

Man believe otherwiſe; much more in the concern of the Heir Apparent to the Crown: and therefore I know not what you would have had done, which has not been obſerv'd in this nice matter.

F. And, Sir, let me tell you, becauſe it was ſo nice a matter, and concern'd no leſs than the Succeſſion of three Kingdoms; therefore the whole Nation, as well as the Prince and Princeſs of *Orange*, were to be fully ſatisfy'd of the reality of the Prince's Birth: ſince they were all ſufficiently ſenſible that there wanted nothing but a Male-Heir to entail Popery on us and our Poſterity. And therefore there ought to have been preſent ſuch Perſons as had no dependance upon the Court, and who ought to have been delegated by the Prince and Princeſs of *Orange*, ſince the Princeſs of *Denmark* could not be there in Perſon; but inſtead of this, the only two Ladies who (as I am inform'd) were truſted by the Princeſs to be preſent at the Queen's Labour, were never ſent for till ſhe was brought to Bed and the Child dreſs'd. And as for the reſt of the Witneſſes, they were either Lords, or other Perſons, who only ſwear they ſtood in the Room at a diſtance, and heard the Queen cry out; and immediately after the Child cry, ſome time before they ſaw it. And as for the Ladies, the greateſt part of them ſwore no further than the Lords. So that notwithſtanding all that they have ſworn in this matter, there might have been a trick put upon them, and they never the wiſer: ſince you may read in *Siderfin*'s Reports, of a Woman who pretended to have been deliver'd of a Child by a Midwife within the Bed; and yet many years after, this was prov'd to be a ſuppoſititious Birth, by the Depoſition of the Midwife, and the poor Woman who was the real Mother of the Child, and others that had been of the Conſpiracy. And what has been done once, may be done again.

Siderfin's *Reports*, Temp. Car. 2. Fol. 377, 378. *The King againſt* Buckworth, Tuckee, Gill, *&c.*

'Tis true, the King himſelf with one or two Ladies depoſed ſomething further as to Milk, and the feeling of the Child immediately before the Birth; but his Majeſty, if it be an Impoſture, is too deeply concern'd in it, to be admitted as a competent Witneſs. And as for the reſt of the Ladies, they are likewiſe, as being the Queen's-Servants, and having an immediate dependence upon her, to be excepted againſt, and under too much awe, to ſpeak the whole Truth. But it is very ſtrange to me, that none of them depoſed any thing concerning their ſeeing any Milk come from her Majeſty's Breaſts after ſhe was deliver'd. And perhaps there was good reaſon for it, for I have had it from good Hands, that ſhe had none afterwards, whatever ſhe had before; the reaſon of which deſerves to be enquir'd into, ſince it is very rare. But as for the Midwife, her Depoſition is equivocal; *That ſhe took a Child from the Body of the Queen.* She is alſo a Papiſt, and conſequently a ſuſpected Witneſs in this Cauſe. Whereas all this might have been prevented, had the Queen (were ſhe really with Child) been perſuaded to be deliver'd not within the Bed, but upon a Pallate; where all the Perſons whoſe Buſineſs and Concern it was to be preſent, might have ſeen the Child actually born: nor needed there to have any Men been by, tho I have heard that the late Queen of *France* was deliver'd of the preſent King, the Duke of *Orleans* not being only preſent in the Room, but an Eye-witneſs of the Birth. And ſo ſure, if ſomewhat of this nature had been done, it might have ſav'd a great deal of Diſpute and Bloodſhed which has already, or may hereafter happen about it. And therefore I do not at all wonder that the Prince of *Orange* ſhould not take this partial Evidence that has been given for ſufficient Satisfaction; ſo that whether this Birth of the Queen's was real or not, I ſhall not now farther diſpute. It is ſufficient, that if his Highneſs and his Princeſs had juſt and reaſonable ſuſpicions of an Impoſture, whilſt they remain under them, they had alſo a juſt Cauſe of procuring a Free Parliament to examine this great Affair, and alſo to obtain it by Force, ſince it was to be got no other way.

M. I need not further diſpute this Buſineſs of the Prince of *Wales* with you, ſince I durſt appeal to your own Conſcience, whether you are not ſatisfied, notwithſtanding theſe ſuppos'd Indiſcretions in the management of the Queen's Delivery, that he is really Son to the Queen: and I think it would puzzle you or I to prove the Legitimacy of our own Children by better Evidence than this has been. And I think all thoſe of your Party may very well deſpair of producing any thing againſt it, ſince the Prince of *Orange* himſelf has thought it beſt to let it alone, as knowing very well there was nothing material could be brought

brought in Evidence againſt him: But I ſhall defer ſpeaking further on this Head, till I come to conſider of the Convention's ſettling the Crown upon the Prince and Princeſs of *Orange*. But before I come to this, I have many things further to obſerve upon the Prince's harſh and unjuſt Proceedings with his Majeſty, and refuſing all Terms of Accommodation with him, upon his laſt return to *London*.

In the firſt place therefore I muſt appeal to your ſelf, whether it were done like a Nephew, and a Son-in-law, when after the King was voluntarily returned to *White-Hall*, at the Perſuaſion of thoſe Lords who went down to attend him at *Feverſham*, before he had ſcarce time to reſt him after his Journey, and the many Hardſhips he had endured ſince his being ſeized in that Port; and when he had but newly ſent my Lord *Feverſham* with a kind Meſſage and Compliment to the Prince, inviting him to *St. James's*, together with ſome Overtures of Reconciliation, as I am informed; the Prince ſhould make no better a return to all his Kindneſs, than to clap up the Meſſenger, contrary to the Law of Nations, as his Majeſty obſerves in this late Paper I now mentioned: and ſhould, without any Notice given to the King of it, order his Men to march, and diſplacing his Majeſty's Guards, to ſeize upon all the Poſts about *White-Hall*, whereby his Majeſty's Perſon became wholly in his power. And not content with this, he likewiſe diſpatch'd three Lords (whoſe Names I need not mention) to carry the King a very rude and undutiful Meſſage, deſiring him no leſs than to depart, the next Morning, from his Palace, to a Private-Houſe in the Country, altogether unfit for the Reception of his Majeſty, and thoſe Guards and Attendants that were neceſſary for his Security. Nor would theſe Lords ſtay till the Morning, but diſturbing his Reſt, delivered their Meſſage at Twelve a Clock at Night; nor did they give him any longer time than till the next Morning to prepare himſelf to be gone: and then the King was carried away to *Rocheſter* under the Conduct, not of his own, but of the Prince's *Dutch* Guards; in whoſe Cuſtody his Majeſty continued, for thoſe few days he thought fit to ſtay there, till his Eſcape from thence, in order to his Paſſage into *France*: by which means the Prince hath render'd the Breach irreconcileable between his Majeſty and himſelf: For whereas, if he had come to *St. James's*, in purſuance of the King's Invitation, and had renewed the Treaty, which was unhappily broke off by the King's firſt going away, there might have been, in great probability, a happy and laſting Reconciliation made between them, upon ſuch Terms as might have been a ſufficient Security for the Church of *England*, as alſo for the Rights and Liberties of the Subject, which you ſo earneſtly contend for; whereas, by the Convention's declaring the Throne vacant, and placing the Prince and Princeſs of *Orange* therein, they have entail'd a laſting War, not only upon us, but our Poſterity, as long as his Majeſty lives, and the Prince of *Wales*, and his Iſſue (if he live to have any) are in being.

F. I confeſs you have made a very Tragical Relation of this Affair, and any that did not underſtand the Grounds of it would believe, that King *James* being quietly ſettled in his Throne, and the Prince of *Orange* refuſing all Terms of Reconciliation, had ſeized upon his Palace, and hurried him away Captive into a Priſon; whereas indeed, there was nothing tranſacted in all this Affair, which may not be juſtified by the ſtricteſt Rules of Honour, and the Law of Nations: for the doing of which, it is neceſſary to look back, and conſider the State of Affairs immediately after the King's leaving *Salisbury*, and coming to *White-Hall*, where one of the firſt things he did after he was arrived, was to iſſue out a Proclamation for the calling a New Parliament, which was received with great Satisfaction by the whole Nation; and immediately upon this, the King ſent the Lords *Hallifax*, *Nottingham*, and *Godolphin*, to treat with his Highneſs upon thoſe Propoſals of Peace which he then ſent by them, and to which the Prince return'd his Anſwer, the Heads of which are very reaſonable, when he did not demand any other Security for himſelf, and his Army, than the putting of the *Tower*, and Forts about *London*, into the Cuſtody of that City. Now pray obſerve the Iſſue of all thoſe fair Hopes; before ever the Terms propoſed by the Prince could be brought to Town, the King following the ill Advice of the Popiſh Faction, inſtead of ſuffering the Elections for Parliament-Men to proceed, as he had promiſed, and as was hoped for by us, all on a ſudden he order'd the reſt of the Writs for Elections, that were not ſent

down, to be burnt, and a Caveat to be entered againſt the making uſe of thoſe that were ſent already into the Country; and at the ſame time he ſent Order to the Earl of *Feverſham* to disband the Army, and diſmiſs all the Soldiers with their Arms. But I had forgot to put you in mind, that juſt before this the King had ſent away the Queen, with the Prince, into *France*, and that ſhe carried the Great-Seal of *England* along with her; whereby it was plain, the King intended to put it wholly out of his power to iſſue out any Writs, or paſs any publick Act, wherein the Great-Seal ſhould be uſed: and that this Seal was carried away, appears by its being not long ſince drawn up out of the *Thames*, by a Fiſherman's Net, near *Lambeth-Bridge*, where it's ſuppoſed to have been thrown in by the Queen, or ſome of her Attendants, in her Paſſage over the Water: And farther, that the King was then reſolved wholly to quit the Government of this Kingdom, (at leaſt for the preſent) appears by his ſo ſpeedy following of the Queen, within three Days after, ſtealing from his Palace by Night in a Boat to *Graveſend*, and from thence in a ſmall Veſſel to *Feverſham*; where how he was ſeiz'd by the *Mob* of that Town, and afterwards return'd to *London*, as you have ſet forth, I need take no further notice.

Now this being a true and fair Narrative of the whole Matter, I ſhall only offer two or three Queſtions to your Conſideration, and deſire you would give me a fair and ſatisfactory Anſwer to them: *Firſt*, Pray tell me whether it was not the King's fault, that it was rendered impoſſible for the Parliament-Men to be elected, by burning of the Writs, and ſending away the Great-Seal? *Secondly*, Whether the King by firſt ſtealing away, did not plainly confeſs himſelf conquer'd by the Prince, and did thereby *Abdicate* the Government? Alſo by his obſtinate refuſal to redreſs the Grievances of the Nation, he forfeited his Crown and all Allegiance from his Subjects, and was not after this to be own'd as King of *England*, either by the Prince of *Orange*, or any body elſe: and therefore, whatever Treatment he after this received from the Prince, it was not to be looked upon as done to a lawful King, but a conquered Prince; and his Highneſs might not only juſtly refuſe to treat with him any more as a Crowned Head, but might alſo have juſtified not only the taking him Priſoner, but ſending him into *Holland*, if he had pleas'd: but inſtead of this, he only deſir'd his removal out of Town, from that Conflux and Influence of thoſe Multitudes of Papiſts that flocked to him; and by ſecuring his Perſon, to put it out of their power to play any After-Game, and rally the late disbanded Army, of whom there was at leaſt Twenty Thouſand of the *Scots*, *Iriſh*, and *Engliſh*, who would have ſtood by the King till the laſt: And therefore the *Engliſh*, as well as the *Dutch*, Council about the Prince, did not think it ſafe for him to come to Town, as long as the King had his Guards about him at *Whitehall*, ſince they might have been increaſed to an Army whenever he pleaſed.

And though I grant good Breeding and Manners, eſpecially to Kings, as alſo Reſpect from a Son-in-law to a Father, are Duties incumbent upon Princes, as well as private Men; yet when theſe leſſer things ſtand in competition with their own Welfare and Safety, as alſo of the whole Nation, for which the Prince was now engaged; if he might, for theſe Ends, juſtly require the removing and ſecuring the King's Perſon, it was no great matter what time of Night he had notice to remove: though this was not done neither with any Deſign to affront or ſurprize him, but happened indeed through pure Accident; for when it was reſolved that the Prince's Guards ſhould march to *London* and ſecure *Whitehall*, it was alſo reſolved that the King ſhould have notice to remove. And ſince it was not thought fit to let him know it till the Poſts were all ſecur'd, the Ways being very deep and dirty between *Windſor* and *London*, the *Dutch* Guards, commanded by Count *Solmes*, could not reach the Town till paſt Ten at Night; and after that it was near Twelve before the *Engliſh* Guards, about *Whitehall*, could be drawn off without fighting: and till that was done, it was not thought at all proper, or ſafe, to deliver to the King the Prince's Meſſage for his departure. So that indeed it was not from any Deſign in either the Prince and his Council who ordered it, or of theſe Lords (who very well underſtand good Breeding) thus to deliver their Meſſage to him at that time of Night.

But

But tho he was in bed, yet that he was not asleep is very probable, since he had not been above half an hour in bed; and it is not very likely he should be asleep, when he very well knew in the Evening before of the Arrival of the Prince's Troops about *Whitehall*, and therefore could not be without too much Concern about it, presently to compose himself to sleep.

But as for his Removal from *London*, it is plain that his Highness was so far from owning, or receiving the King in the same Capacity he was in before his Departure, that as soon as ever he heard he was at the Earl of *Winchelsea*'s, and about to return to *London*, he sent away Monsieur *Zulestein* with a Letter to let him know, that he desired him not as yet to come to *London*, but to stay at *Rochester* till he himself should come to Town; but Monsieur *Zulestein* missing of the King by the way, he came in the mean while to *Whitehall*: yet could not but know that his being there was not with the Prince's Consent, since the same Gentleman followed him thither, and there delivered him the Prince's Letter; so that this second Message by these Lords could be no new thing, or Surprize to him. Yet that his Highness never intended the least Violence towards the King's Person, may appear by this, that he left it to the King's Choice what place he would go to, as also what Guards or other Attendants he would take with him; when the King refused to take his *English* Guards with him, tho they were offered him. And indeed these *Dutch* Guards that attended him, might, in his Majesty's Judgment, be very well trusted, they being (as well as their Officers) for the most part Papists; but that the Prince did not intend to detain his Majesty's Person as a Prisoner, may appear in this, That whilst he remained at *Rochester*, none that would were debarred from access to him, and that the Officers and Soldiers of the Guards were ordered to be under his Command, and every night to take the word from him; and had it not been for the King's commanding a Centry to be drawn off from his usual Post, he could never have gone away without being discovered; and if he would have gone away at noon-day, I know not who, unless the Rabble, would have hindred him. So that I think it is evident, that this was the civilest and mildest Usage that a vanquished Prince could expect from him that had so much the better of him, and in whose power he now was, and I doubt more than the King would have allowed the Prince, had it been his Fortune to have got him as much in his power: nay, the King was so far from being confined, that it is plain he had the liberty given him to go whither he pleased; nor were these Guards placed so much about him for his Confinement, as to secure him from the Insults of the Rabble, who otherwise there, as well as they did at *Feversham*, might have expressed too violent a Resentment against his Person.

M. I cannot deny but you have given a very fair, and as far as I know, a true account of this Transaction, and have told me some things which I never heard before; but however, I cannot depart from my first Opinion, that it was neither honestly nor wisely done of those, who took upon them to advise the Prince to push things to Extremities in this Conjuncture: and therefore I impute it chiefly to those *English*, who supposing they had by taking Arms, and joining themselves to the Prince's Party, provoked the King beyond all possibility of Pardon, were resolved to do their utmost to put it out of the King's power ever to call them to an account for it. And tho perhaps his first sending away the Queen and Prince, and then going away himself, in the middle of a Treaty with the Prince, and thereby leaving his Affairs in such Confusion, may seem to deserve Censure; yet certainly his Majesty is to be excused in a great measure for what he then did: for as he tells the Earl of *Feversham*, in his Letter to him to disband the Army, *That things being come to that extremity, that he was forced to send away the Queen, and the Prince his Son, that they might not fall into the Enemies hands*, he was also constrained to do the same thing himself, and follow them, since the Troops of his Army were not to be relied on; that it was not advisable for him to fight the Prince of *Orange* in the head of them, much less was it safe for him to trust himself in the Prince's power: and sure it was but reasonable that Princes, as well as other Men, should provide for their own Security as well as they can. H. D. *p.* 92.

But yet I can never believe that his Majesty's first going away was any Abdication of the Government, much less a Forfeiture of his Crown or Royal Dignity, any more than the second: for in the first place it could be no Forfeiture,

according to your own Principles, becauſe he had already diſſolved the Eccleſiaſtical Court, and reſtored the Cities and Corporations to their former Charters and Freedom in Elections of Parliament-men, and put again in Commiſſion all Lords Lieutenants, and Juſtices of the Peace, who had been before turned out: And if he could not give an entire Redreſs to all our Grievances by a Free Parliament, it was only becauſe he durſt not ſtay to hold it, ſince he thought he could have no Security for his Perſon, the whole Nation being in a manner poiſoned and prepoſſeſſed againſt him, by thoſe malicious Artifices
D. D. of a *French* League, and a ſuppoſititious Prince, and that his Majeſty had ſo many unfortunate Diſappointments, and ſo ſurprizing and unparallel'd Accidents; part of his Army deſerting him, and the reſt proving unſerviceable, when there were ſuch terrible Diſorders in the Kingdom, and all Places were either flaming, or about to take the fire of Rebellion.

So likewiſe could it not be properly any wilful Deſertion or Abdication of the Government, ſince he was forced to quit it, like the Maſter of a Ship, who when the Veſſel is like to ſink, is forced to leave her, and eſcape in a Cock-boat. And that his Majeſty did not act thus without an Intention to return, and again to vindicate his Right, when Opportunity ſerved, appears likewiſe in that Paſſage in the above-mentioned Letter, wherein he deſires both the Officers and Soldiers of his Army, then to be disbanded, *to continue their Fidelity to him, and to keep themſelves from Aſſociations, and ſuch pernicious things.* From whence it plainly appears, he went not away without a Proſpect of returning to his Throne when time ſhould ſerve: and if he left no Orders at all for the Government of the Kingdom in his abſence, nor named any Commiſſioners or Lieutenants to repreſent him, it was becauſe he thought it to no purpoſe; ſince beſides that he could find no body who durſt undertake ſo difficult an Employment, ſo they that had undertaken it, would have found no body who would obey them; the Generality of the People, and alſo of the King's Army, being more inclinable to the Prince of *Orange* than to himſelf.

Yet however you ſee, upon his return to Town, the King was ſo well perſuaded of the Prince of *Orange*'s kind Intentions towards himſelf and the Nation, that I verily believe his Majeſty would have yielded to any thing that could in reaſon have been deſired of him. And upon this ground I ſuppoſe he writ ſo kindly to the Prince, and invited him to come to *St. James's* with what Troops he ſhould think fit for his Security; therefore I muſt needs tell you again, I think it was a great Overſight of the Prince of *Orange* thus to let ſlip this Opportunity, by refuſing all Terms of Accommodation with the King, and by clapping up my Lord *Feverſham*, then ſeizing the King's Perſon, and ſending him out of Town, to let all the World ſee he was reſolved to treat no more with him. And this being the true State of the Caſe, it is not your ſaying that he had forfeited his Crown by going away, and conſulting his own Safety, that will convince any unprejudiced Man: for as to your notion of a Forfeiture, that it was not then entred into the Thoughts of the Peers, and others of the Privy Council, appears by the Order they made for ſending the Lords *Feverſham*, *Ailsbury*, *Yarmouth*, and *Middleton* moſt humbly to intreat the King to return to *Whitehall*; ſo that he was received very joyfully, and with great Acclamations of the common People, as he paſſed thro the City: and when he came to *Whitehall*, he called a Council, where he made an Order to ſtop the demoliſhing and plundering of Houſes by the Rabble; ſo that he was not only received, but alſo acted as a King after his return to Town. This being the true State of the Caſe, I ſhall not diſpute the Point, whether his Majeſty and the Prince were in a ſtate of War or Peace, after his return, or what the Prince might have done as an Enemy and a Stranger to the King's Perſon; but what might be expected from him as a generous Prince, a Nephew, and a Son-in-law, and one who was bound in Conſcience and Honour to conſult the laſting Peace and Happineſs of the Nation more than his own private Intereſt, or the Ambition of wearing a Crown.

F. You have made the utmoſt Defence that I ſuppoſe can be brought for the King's firſt going away; yet if it be better conſidered, I doubt it will not ſerve the turn. I ſee you are forced to lay the whole blame of the King's Departure in the midſt of the Treaty with the Prince, and his refuſing to call a Parliament according to his own Promiſe and Proclamation, upon his want of

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ſecurity for himſelf, the Queen, and Prince, if he had ſtaid; by reaſon of the failure of Fidelity in his Army, the general prejudice of the Nation againſt him, and the great Firmneſs and Reſolution there was in the Prince's Army to adhere to him. Now I ſhall ſhew you that every one of theſe were but Pretences, and that the real cauſe of his Departure was, becauſe he feared to leave the Inquiry into the Birth of the Prince of *Wales*, and the free Examination and Redreſs of our Grievances, and thoſe Violations he had committed upon the fundamental Conſtitution of the Government, to the impartial Judgment of a Free Parliament. For in the firſt place, as to want of Fidelity in his Army, there can be no juſt excuſe for his deſerting and disbanding them as he did, without any Pay; ſince he himſelf, in his ſaid Letter to the Earl of *Feverſham*, expreſly owns, "That there were a great many brave Men, both Officers and "Soldiers, among them:" And therefore, if he was ſatisfied of this, he ought to have firſt ſent for all his Officers, both Colonels and Captains, and have examined them how far they would ſtand by him in the Defence of his Perſon and Cauſe againſt the Prince of *Orange*; and he might have alſo ordered thoſe Officers to have examined every Regiment, Troop, and Company in his whole Army, how far they would engage in his Defence. And if he had proceeded thus at *Salisbury*, before he fled away in that Confuſion to *London*, I have been credibly informed by divers Officers of that Army, that the King might have found above 20000 Men, that would have ſtood by him to the laſt Man, in his Quarrel againſt the Prince; and therefore I impute his going away, as he did from *Salisbury*, to ſome ſtrange panick Fear that God had caſt upon him, and all the Popiſh Faction about him, ſince he has been known not to want ſufficient Courage upon other Occaſions. But tho he had omitted it there, yet he certainly ought to have tried this laſt Experiment after he came to *London*, rather than have quitted the Kingdom ſo diſhonourably as he then did, and thereby giving the Prince of *Orange*'s Friends an Opportunity of ſeizing or getting delivered into their power all the Gariſons and ſtrong Places in *England*, beſides *Portſmouth*, in thoſe three or four days time that he was not heard of; beſides great part of the Army, that was not disbanded, had in that time gone in to the Prince, in hopes of their Pay and future Preferment. Now that the King might with ſafety have reſided with his Army ſomewhere about *London*, he himſelf grants, in his Propoſals to the Prince, to this effect: "That in the H. D. *p.* 90. "mean time, till all Matters were adjuſted concerning the Freedom of Elec- "tions, and a Security of their Sitting, the reſpective Armies may be re- "tained within ſuch Limits, and at ſuch Diſtance from *London*, as may pre- "vent all Apprehenſions that the Parliament may be in any kind diſturbed." Which Propoſals being made not long after the King's Arrival at *London*, we may reaſonably ſuppoſe, that he was then well enough ſatisfied with the Fidelity of the greateſt part, at leaſt of his own Army, to him; and if he were not, he might have been better ſatisfied if he pleaſed in the Word and Honour of the Prince. But as for the next Difficulty, the Nation's being poiſoned and prepoſſeſſed againſt him; admit it were ſo, as long as he had a ſufficient Army about him (as I ſuppoſe he might have had) he need not have feared any thing the People could do. But indeed this was a needleſs fear: for before the Parliament could ſit, it was not the People's Intereſt to hinder it, or to fall upon the King or his Army when matters were in a fair way of Accommodation; ſo after the Parliament ſat, there would have been leſs cauſe of Fear, ſince the Reverence of that Court would have kept them in awe. But as to the Firmneſs and Reſolution of the Prince's Army, the fear of that was alſo needleſs, as long as the King's Army continued as firm to him; and if the Prince's Army had been the firſt Aggreſſors, I doubt not but the People would have taken part with the King againſt them. But after all it was certainly (and you muſt grant it ſo) much more ſafe and honourable for the King to have treated with the Prince, and held a Parliament, with an Army about him, than to have yielded the ſame things (as you ſuppoſe him willing to have done) after his return to Town, when his Army was disbanded, and *London* had received the Prince, and had joined with him, and when almoſt all the ſtrong places of *England* were in the Prince's power. So that upon the whole matter it evidently appears, that the King choſe to truſt his own Perſon, together with that of the Queen and Prince, to a foreign Monarch, rather than he would

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rely upon the Juſtice or Fidelity of his own Nation. And notwithſtanding all you have ſaid concerning the King's Willingneſs, you ſay in the next place, that nothing the King has done in all theſe Exorbitances he committed, can in any wiſe amount to a Forfeiture, or Abdication of the Government; not to the former, becauſe the King redreſſed all our Grievances before he went away. 'Tis true, I grant he redreſſed ſome of them, by putting divers things in the ſame ſtate they were before; yet for all this, the greateſt ſtill remain'd unredreſſed, *viz.* the raiſing of Mony contrary to Law, and the Diſpenſing Power, both which (as I have already ſhewed you at our laſt Meeting) he never diſclaimed, neither took any ſufficient Courſe, by calling a Parliament, to prevent its being exerciſed for the future; beſides his going away, without giving the Prince and Nation any further ſatisfaction about the Birth of the Prince of *Wales*. All which not being done, I muſt ſtill affirm, that this wrought a Forfeiture of the Crown, or an Abdication of it, at leaſt by his refuſal to hold and govern it according to the fundamental Laws thereof; for he that deſtroys the Law or Conditions by which he holds an Eſtate, does tacitly renounce his Title to it, as I ſhewed you in the Caſe of a Tenant for Life, alien-
H.D. *p.* 92, 94. ing in Fee. So that this being conſidered, as alſo that the City of *London* and the whole Nation had ſurrendred themſelves to the Prince of *Orange*; and that even the Archbiſhops of *Canterbury* and *York*, together with the Biſhops of *Wincheſter* and *Ely*, with divers other Earls, Biſhops, and Lords then in Town, had ſent an Addreſs to the Prince, immediately upon the King's Departure, and ſent three Lords and one Biſhop with it, deſiring his Highneſs to come ſpeedily to *London*, and to take the Government upon him, having before declared that they would, with their utmoſt Endeavours, aſſiſt his Highneſs for the obtaining of a Free Parliament: the Prince had no reaſon, upon the King's Return, to ſurrender that Power which the Nation, as far as it was able to do without a Parliament, had put into his hands; and that to a King, whom he had very little reaſon to believe, would uſe it any better than he had done before.

But I ſee you wilfully decline entring into the Merits of the Cauſe, and arguing the main Point in the Controverſy, *viz.* Whether the King was in a State of War or Peace with the Prince upon his Return; for if he were ſtill in a State of War, the Prince might certainly very well juſtify his clapping up the Earl of *Feverſham* (his late Majeſty's General) for offering to come within the Limits of the Prince's Quarters without his leave, eſpecially ſince he was ſtill anſwerable for doing his Endeavour to disband an Army (a great part of which conſiſted of Papiſts and Foreigners, with their Arms in their hands) whereby they might have robbed and ſpoiled the Countries, or at leaſt have kept thoſe Arms to renew the War again with the firſt Opportunity: ſo that certainly it could not be ſo ſlight a thing as a bare Invitation to *St. James*'s, whither the Prince could have gone without his leave (being now Maſter of the City) which could ſo far efface all the Prince's juſt Reſentments, and make him ſo far confide in the King's Word, as to come to *London*, whilſt he remained there with his Guards, and all thoſe Papiſts and Tories in and about *London* ready to take his part, and rally again into a new Army upon the firſt Signal.

But as for any Propoſals of Peace or Accommodation, which you ſay the Lord *Feverſham* brought with him, I neither know nor have heard of any ſuch thing. 'Tis true, the King ſays in the ſaid Paper he left behind him, that he had writ to the Prince of *Orange* by the Lord *Feverſham*, and alſo mentions ſome Inſtructions he had given him; but what they were, he does not tell us: but ſure they were not Propoſitions of Peace, ſince it is to be ſuppoſed, that the King would not have ſent any thing of that conſequence, without firſt acquainting the Privy Council with it before it was ſent. But ſince we hear of nothing concerning them, we may very well ſuppoſe there was no ſuch thing; or if there were, his Highneſs was the fitteſt Judge whether they were reaſonable or not: and if the King had any deſire to propoſe any juſt or reaſonable Terms, whereupon he might have hoped to have been reſtored again to his Royal Dignity, he had a very fair Opportunity for it, when a great Council of the Nobility were met at *St. James*'s, in order to ſign an Aſſociation, to ſtand by the Prince in the calling of a Free Parliament: for the King might then, if he had pleaſed, have made his Propoſals by ſuch of the Lords and Biſhops as

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he could moſt confide in, and have conjured all the Peers there aſſembled to have interceded with the Prince of *Orange* to renew their Treaty with the King, which had been before unhappily broken off; and then if either the Peers had refuſed to do this, or the Prince had refuſed to hear them, the King might then (I grant) have had ſufficient Reaſon to declare to all the World, that he was not fairly dealt with. But for him again to go away only upon a Pretence that his Perſon was under Reſtraint, when really it was not, plainly ſhewed, that he had no ſincere Deſign of making an amicable end of thoſe Differences, or really deſired to be reſtored to his Throne by the general Conſent of the Nation; but either hoped for it from thoſe Civil Diſſenſions he expected we ſhould fall into upon his Departure, or elſe to the Arms of *France*. And this being the Caſe, I think nothing is plainer, than that the King, both by his firſt and ſecond Departure, hath obſtinately refuſed all thoſe means whereby the Nation might have been ſettled, with a due Conſideration of his Perſon and Authority whilſt he lived, and of the ſuppoſed Prince, when his Legitimacy ſhall be ſufficiently proved, and made out before a Free Parliament. So that ſince I have already proved that the King had, before the Prince's Arrival, committed ſo many Violations upon the whole Conſtitution of the Government, and that theſe Violations, if wilfully and obſtinately perſiſted in, do at laſt produce an abſolute Abdication and Forfeiture of the Crown it ſelf; I think the late King has done all that could be required to make it ſo.

But I have forgot to anſwer one Objection you made, *viz.* that the Peers and Biſhops, when they invited the King to return to *Whitehall*, had no notion of this Forfeiture, nor the People of *London*, who, you ſay, received him with great Joy and Acclamations; and that therefore it is wholly a new Invention. To this I anſwer, That if the Lords you mention did ſend this Meſſage to the King, it might be becauſe they were ſurprized with his unexpected Return, and had not well conſidered all the Circumſtances of the Caſe, and thereby did more than they could well juſtify, having before declared, they would ſtand by his Highneſs in procuring a Free Parliament, which muſt certainly be without the King, ſince he was then gone away, and they had alſo invited him to come to *London* as well as the City had; and how that could conſiſt with inviting the King thither, without the Prince's Conſent, I do not well underſtand. But it ſeems they quickly altered their Sentiments, as appears by their preſently after ſubſcribing a Paper, in the nature of an Aſſociation, to ſtand by the Prince, without taking any notice at all of the King: and the very day of the King's Departure they met to conſider upon the Prince's Speech he had a day or two before made to them, deſiring them to adviſe on the beſt means how to purſue the ends of his Declaration, in calling a Free Parliament. And within two days after they preſented the Prince with their Advice, to call a Convention on the 22d of *January*, which was alſo the next day agreed to by one hundred and ſixty Perſons, who had ſerved as Knights, Citizens, and Burgeſſes in any of the laſt Parliaments, in the time of King *Charles* II. without taking any notice at all of the King: for tho it was true he was then gone away when the Commons and City, two or three days after, made their Addreſſes to the Prince; yet when the Peers met both the firſt and ſecond time on the 21ſt and 22d of *December*, he was ſtill here, for the King did not leave *Rocheſter* until the 23d in the morning. So it is plain, it was not their Deſign to own, or take notice of him any more as King; and that which makes it more remarkable, is, that ſeveral of the Biſhops, *viz.* the Archbiſhop of *York*, together with the Biſhop of *St. Aſaph*, and others, joined with the reſt of the Peers in theſe Addreſſes; which was a plain ſign they all looked upon the King's Power to be now at an end. But as for the Acclamations of the People, or any great Joy in the City expreſſed upon the King's Return to Town, I doubt you have had a falſe account of that matter; for I cannot hear that any of the Citizens went out to meet him, or ſet any Lights in their Windows, tho he came into *London* after it was dark, or that any of the better ſort bid him God-ſpeed. I grant indeed there was a great many of what you call the Mob, but more Boys than Men, who followed his Coach, making Huzza's, whilſt the reſt of the People ſilently looked on.

M. I cannot deny but you may have given a true account of theſe Matters, ſince you may have obſerved them better than I; yet as you your ſelf have related

lated them, ſure the King had ſufficient cauſe to conſult his own Safety, and make his Eſcape as ſoon as he could: for what could he expect when once the Prince had ſecured his Perſon under a Guard, and had refuſed to treat with him as King; and that alſo the Peers, and divers of the Biſhops had made an Aſſociation to ſtand by the Prince of *Orange*, and had made a freſh Addreſs to him, without taking the leaſt notice of him, as if there had been no ſuch thing as a King in being? I ſay, what could his Majeſty now expect, but either a more cloſe Confinement, or elſe being taken off privately by Poiſon, or ſome other ways, ſince he could not be forgetful of the King his Father's Saying, *That there is no great diſtance between the Priſons and the Graves of Princes?* Or admit he had lived till this Convention-State, what could he have expected more, than retaining the bare Title of King, whilſt the Prince of *Orange*, or ſome others appointed by him, had wholly managed the Government at their pleaſure? Or elſe they might, according to your Doctrine, have either declared the Crown forfeited, or elſe that he had abdicated it by his going away. Or who can tell but they might have again renewed the Villany of 48, and have made him undergo the ſame Fate with his Father?

F. I grant you have urged the utmoſt that can be to juſtify the King's ſecond Departure; and as I would not deny but that he was the beſt Judge of his own Danger, ſo were the Prince, Peers, and Commons, together with the City, the beſt and only Judges we could then have of the true means of our Settlement and Safety: ſince after ſo many Breaches that the King had made upon his firſt Declaration and Coronation-Oath, as alſo his going from his late Promiſe of calling a Free Parliament; I cannot ſee what farther Security he could have given us that he would not repeat the ſame things over again.

H. D. *p.* 110. Or admit the Prince had ſuffered him to continue at *Whitehall*, and to call a third Parliament, what aſſurance could he have given, that in the end of another forty days we ſhould not have the ſame Trick plaid us? and then in *March* or *April* have been left in the ſame State of Confuſion we were in in *December*, to the certain Ruin of theſe three Kingdoms, and *Holland* into the bargain? And then by that time the *French* King might have got ready an Army and a Fleet, and under a pretence of redeeming his Majeſty from the Conſtraint he lay under, and of reſtoring him to the free Exerciſe of his Regal Power, have invaded this Kingdom. And I ſuppoſe you cannot deny but the King would then have found Papiſts and High Tories enough to have joined with him in this pious Deſign: for certainly the Scruples of the High Churchmen would have been the ſame they are now, the Obligations of the Oath of Allegiance the ſame, and the ſuppoſed Sin of depoſing a lawful King the ſame, tho he had utterly refuſed to give the Prince and Nation any ſufficient Satisfaction. So that then if we had been forced to take Arms, and to declare he had forfeited his Right to the Crown, all theſe things would have given as

Ibid. *p.* 111. great, or rather greater Scandal, than for the Nation to take him at his firſt Offer; and ſince he had thus raſhly deſerted the Throne by a needleſs Departure, to reſolve he ſhould aſcend it no more.

But ſuppoſe (what might alſo as well have happened) that the Quarrel being renewed, the Prince and his Party had been killed, or expelled the Kingdom by the King, do you think he would have granted us then what he would not grant us now? Would he not, think you, have disbanded his Proteſtant Army, and have kept only *Iriſh*, *Scotch*, and *French* Forces in pay, and have every day increaſed them? What reſpect can we hope he would ever after this have ſhewn to our Laws, Religion, or Liberties, when he had now no longer any thing to fear? The memory of what happened after the Duke of *Monmouth*'s Defeat (tho effected only by thoſe of the Church of *England*) will certainly never be forgotten by others, whatever you Bigots of Loyalty may pretend or ſay.

So that for my part I ſtand amazed to ſee you, and ſo many others, ſcruple ſubmitting to the preſent King; for if ever Man had a juſt cauſe of War, he had, and that creates a Right to the thing gained by it: the King by withdrawing, and disbanding his Army, yielded him the Throne; and if he had without any more Ceremony aſcended it, he had done no more than ſeveral Princes formerly have done on the like occaſions: for the Prince was no longer then bound to conſider him as one that was, but as one that had been King of

England;

England; yet in that Capacity he treated him with great Reſpect and Civility, how much ſoever the King complained of it, who did not enough conſider what he had done to draw upon himſelf that Uſage. But as for your Inſinuation, that if he had ſtaid, he might have run the ſame Fate with his Father, I think it is fuller of Paſſion than Truth; for beſides that the Lords and Commons would never have had the Impudence to have committed ſuch a Villany, the Prince himſelf, as a Nephew and a Son-in-law, would never have ſuffered it.

M. Well, God only knows the Event of things, and we ought to judge charitably, and ſtill to hope, that if the King might have been reſtored upon Terms, he would have been the better for his Affliction, and have amended all thoſe Errors he committed; ſince he had ſeen that neither the Nation, nor yet his Neighbours the *Dutch*, would permit him to make himſelf an Abſolute Monarch. I believe he would have been too much afraid of the King of *France*, ever to have made uſe of his Forces, to have ſettled Popery and arbitrary Government; and without his aſſiſtance, I ſuppoſe you will grant it could not have been done, ſince he plainly found that a Proteſtant Army would never have joined with him to act in ſuch pernicious Deſigns: but however, let the worſt have happened that could be, I think it had been much better for the Nation to have endured it with patience, than to have done that which was Evil, tho for the procuring of the greateſt ſeeming Good, tho for the advantage of our Religion and Civil Liberties. And therefore it had been better for us, in this extremity, to have truſted God than Men, ſince he always promiſes to protect thoſe that rely upon him, and ſtrictly perform his Will. And admit the worſt that could have happened, God would either have removed thoſe Afflictions from us in due time, or have given us patience to have borne them; ſince I ſuppoſe you will not deny, that God oftentimes brings Perſecutions and Afflictions upon a ſinful Church and Nation, either for a Puniſhment for their Sins, or elſe to give an occaſion for thoſe that are truly pious and ſincere, to ſhew their Courage and Conſtancy in ſuffering for the Truth, and by withſtanding, not by Force, but Paſſive-Obedience, all the King's illegal and arbitrary Commands, if he ſhould, after his Re-eſtabliſhment in the Throne, have again renewed his former Courſes. Theſe are the only Remedies which we of the Church of *England*, as obedient Subjects to the King and his Laws, muſt think could have been lawfully taken in this Caſe.

F. I do not deny but what you ſay is in the main very pious and honeſt, were the Caſe as you have put it; but the greateſt part of your Diſcourſe depends wholly upon thoſe old Principles and Prejudices, of the Unlawfulneſs of all Reſiſtance of the Supreme Powers, and that the King is the only Supreme Power in this Kingdom: both which Propoſitions I have ſufficiently confuted at our third, fourth, and fifth Meetings, and alſo at our laſt ſave one: in which I gave you a true account of the legal Senſe of thoſe Oaths and Statutes of King *Charles* II. concerning Reſiſtance, as was alſo given by the beſt Lawyers, and moſt conſidering Men of the then Houſes of Lords and Commons. So that if the means we have uſed are lawful, both by the Laws of God and Man, I think we are not bound to bring Afflictions upon our ſelves, but to avoid them all we can; eſpecially when they come evidently attended with the utter Loſs and Ruin of what ought to be moſt dear to us, our Religion, Civil Liberties, and Properties, and that not only for our ſelves, but our Poſterity, who perhaps would never have regained them when they were once loſt: of which the *French* Nation is an evident Example before our eyes, who by not oppoſing the arbitrary Power of their Kings in due time, have fallen into a Government almoſt as deſpotick as that of *Turkey*. For when once the common Good of the Subjects ceaſes to be the main End of the Governours, the Government then ceaſing to be God's Ordinance, degenerates into Tyranny: which I think may be always lawfully oppoſed by a freeborn People, who at firſt agreed to be governed, not as Slaves but Subjects.

But as for the firſt part of your Speech, it needs not any long Anſwer; it firſt ſuppoſes the King might have been again reſtored upon Terms. Now ſince it is plain theſe Terms muſt have been impoſed upon him againſt his Will, and as neceſſary Conditions of his Reſtoration, I would be glad to know who it was ſhould undertake to impoſe them upon him, and to ſee them kept when they

had been made, whether the Prince of *Orange* or the Parliament. If the former, I grant indeed he might have made ſuch Conditions with the King, that the Church of *England*, as well as the whole Nation, ſhould for the future enjoy their juſt Rights and Liberties; but then the Prince muſt either have truſted wholly to the King's Honour, or elſe he muſt have had ſome ſtrong Places put into his hands for a Security, that the King would not again make the ſame Violations upon our Laws, Religion, and Liberties, as he had done before. Yet I ſuppoſe you will not deny, but that the King might, if he had pleaſed, have broken them all again, ſo ſoon as ever the Prince's back had been turned, and that he had been once engaged in a War with *France*; which could not have been long avoided, conſidering the neceſſity there is at this juncture of time for the States of *Holland* (and conſequently the Prince as their General) to engage with the Emperor and King of *Spain*, to drive the *French* out of the Empire, and to hinder him from making himſelf Univerſal Monarch of *Europe*; which it is plain is the thing he now drives at. But if the Prince ſhould have kept any ſtrong Places here as cautionary Towns, for the King's Performance of the Terms agreed upon, this muſt have been done either by *Engliſh* or foreign Forces: if by the former, this would have been looked upon as inconſiſtent with their Duty and Allegiance to the King, if he ſhould have commanded them to be delivered up into his hands; ſince you tell us, the King has the ſole Command of the *Militia*, and conſequently of all Gariſons manned by his Subjects within his Dominions. But if the Forces that ſhould have held theſe Places had been *Dutchmen*, or other Foreigners, it would never have been endured either by the King or Nation, that Foreigners ſhould poſſeſs the ſtrong Holds and Keys of the Kingdom; and the King might ſoon have wrought (by ſome Jealouſies and Suſpicions, which he would not have failed to have raiſed) that the Nation it ſelf ſhould have joined with him to drive them out, and then the King might have done what he pleaſed without controul. But if you will place this Power in the whole People or Nation, or elſe their Repreſentatives the Parliament, of holding the King to theſe Terms agreed upon, this could not have been done without their conſtant Sitting, and a power of reſiſting him, in caſe he infringed them; and then either they muſt have given up all their Liberties to the King's Will, or elſe farewel to the darling Doctrines of Paſſive-Obedience and Non-reſiſtance. So that, take it which way you will, all impoſing of Terms upon the King, either by the Prince of *Orange*, or the Nation, would in a ſhort time have become either unpracticable or inſignificant. Nor is your other Suppoſition any whit truer, that the King would never have made uſe of the Forces of *France*, to ſubdue and keep under the People of *England*, for fear he ſhould not be able to get the *French* out again. 'Tis true, this would be a very good Argument to a Prince who was no Bigot, and was not reſolved to introduce his Religion by all the ways and means he could; but how near the *French* Forces were to be brought over into this Kingdom the laſt Summer, is very well known to thoſe who were then in *France*, and ſaw them upon the Sea-Coaſt ready to imbark: nor was their coming over put off by any other Motives, than that the Earl of *S.* and Lord *G.* two of the Cabinet-Council, repreſented to the King, that it would be the only means to make the whole Nation riſe up againſt him, and join with the Prince of *Orange* as ſoon as he landed; which I ſuppoſe was the only reaſon that hindred it, for that the *French* King offered to ſend them, is very certain: Yet it does not follow for all that, but the King might take an Opportunity of doing it another time, and bringing them over in their own Ships, if ours would not do the Buſineſs.

And tho I will not affirm that there is any private League with *France*, for the extirpation of the Proteſtant Religion; yet this much I think may be ſufficiently made out, that long ago the King was wholly in the Intereſt of *France*, as appears by *Coleman*'s Letters (whilſt he was his Secretary) when Duke of *York*. The firſt Paſſage is to Sir *William Throgmorton*, Feb. 1. 167¾. *You well know that when the Duke comes to be Maſter of our Affairs, the King of* France *will have reaſon to promiſe himſelf all things that he can deſire.* The next is to Father *La Chaiſe*, the *French* King's Confeſſor, in theſe words, *That his Royal Highneſs was convinced, that his Intereſt and the King of* France's *was the ſame.* And whether the Duke, by his Acceſſion to the Crown, has ſhewed any Alteration in his Inclinations

clinations to *France*, either in reſpect of Religion or Intereſt, I appeal to the World.

Nor is your next Suppoſition leſs out of the way, that the King could have made uſe of no Forces but *French* to ſettle Popery and Arbitrary Government here, as if he had not *Scotch* and *Iriſh* Papiſts enough in his Dominions for this occaſion. And as for Arbitrary Government, we have found to our grief, that there are too many mercenary Soldiers in the King's Army, who fought only for Pay, and would have aſſiſted the King to have raiſed Mony without the Parliament, nay to pull the very Parliament out of doors if he had bid them; and if ſome of them were diſcontented when the Prince came over, I do not ſo much impute it to their honeſt Principles, as fear, leſt they themſelves ſhould be caſhiered, and *Scotch* and *Iriſh* liſted in their rooms. So that upon the whole matter, conſidering the Temper the King was in ever ſince his laſt coming to Town, and that as ſoon as he arrived, the Prieſts and Jeſuits flocked about him as thick as ever, that they and the *French* Envoy were his chief (if not his only) Cabinet Counſellors, I cannot ſee (unleſs he had taken new Meaſures) how we could have been ſecure, or could have relied on any thing he could have farther promiſed, nay ſwore to perform; ſince no Oath could be more ſacred than that at his Coronation, when he ſwore to maintain the Church (that is, the Doctrine of the Church) of *England*, and the Laws of the Kingdom; if that be a true account of the form of it, which we have in Print.

M. At this rate of arguing, I know not what to ſay to you, ſince this Argument amounts to no more than this, *That the King could upon no account be truſted, and therefore was not any more to be treated with.* If this were ſo, to what purpoſe did the Prince of *Orange* declare, that he came not to conquer the Kingdom, but only to procure a free and legal Parliament, which could not be called without the King's Conſent, and owning his Authority? Neither could they have done the leaſt Act for the Amendment of our Grievances, without his Majeſty's Conſent. Or to what purpoſe did the Prince enter into a Treaty with the King's Commiſſioners at *Hungerford*, if his Royal Word and Promiſes were not to be relied on? But if his Majeſty could ever be truſted, I ſee no reaſon why he could not have been ſo, as well ſince his laſt coming to Town as before, ſince he came voluntarily; and, as I have great reaſon to believe, with real Intentions, to grant and perform whatever the Nation could reaſonably expect for the Redreſs of their Grievances; and would have given any reaſonable Security of his performance for the future, without diveſting himſelf of his Royal Power of making Laws, and protecting his Subjects.

But as for the former part of your Speech, whereby you would prove it lawful to reſiſt the King, becauſe you ſay it conduced to the common Good and Intereſt of the Nation, both as to the Proteſtant Religion and Civil Liberties; this is no more than the old Commonwealth Maxim in other words: which I grant is true, if the Safety and Preſervation of the King or other ſupreme Powers of a Commonwealth (who, according to your own Principles, are the Repreſentatives of the People, and conſequently part of it) be likewiſe comprehended and maintained (as they ought to be) in their due Power and Authority. For Biſhop *Sanderſon*, in his learned Lectures, hath very well proved, that thoſe cannot be ſeparated from each other, without deſtroying the Civil Government, which is all the Security we have for our Civil Properties and Liberties; and we ſee in thoſe few days in which his Majeſty's Perſon was withdrawn, when there was no Civil Government in being, that there was greater Infringement of them, both by plundering and deſtroying of Houſes, and ſpoiling of Parks and Foreſts in three or four days time, by the Violence and Fury of the Mob, than have been committed by the moſt arbitrary Kings from the Conqueſt to this day.

F. You very much miſtake me, if you think I maintain that there was never any time after the Prince's Landing that the King might not have been treated withal, and likewiſe truſted with the Adminiſtration of the Government; but then it muſt have been upon ſuch Terms, as ſhould have ſecured us for the future from his acting the like, or worſe things over again. As in the firſt place, he ſhould have renounced his Diſpenſing Power, and that of taking the Exciſe without Act of Parliament, and levying Chimny-mony upon Cottages and

Ovens, directly contrary to Law. Next he should have disbanded his standing Army, and kept up no Forces in time of Peace, besides the necessary Guards of his Person, the number of which should have been agreed upon by Parliament, which should also have sat once every year, or two years at least. And lastly, that in respect of the Church, as long as he or his Successors continued of the Roman Catholick Religion, the Nomination of all Bishops, Archbishops, Deans, with other Ecclesiastical Preferments, which are not in the immediate Disposal of the Lord Chancellor, should have been in the Archbishop and Bishops of each Province; they chusing two, out of which his Majesty should have chosen one, for to supply each Bishoprick, *&c.* as it became vacant.

And therefore, for my own part, I was so far from believing all Agreements with the King to be unpracticable, that there was no body rejoiced more than I, when upon his Majesty's first return to *London*, he so far complied with the Desires of the whole Nation, as to issue out his Proclamation for a Free Parliament, and that he sent down his Commissioners to treat with the Prince; and I had then great hopes of an Accommodation. But when, instead of this, the King had burnt the Writs for the Election of Parliament-men, and had sent away the Queen and Prince, together with the Great Seal, that no more Writs might be issued, and that before ever the Commissioners could return to *London*, or before any Answer to the Prince's Proposals was given by the King, he had withdrawn himself, and done all he could to get away into a foreign Kingdom; it was then, and not till then, that I saw all hopes of Agreement absolutely desperate. And tho you put a great stress upon the King's last Return to Town, which, you suppose, was with a Design to agree with the Prince in every thing that could be in reason demanded, I can see no cause for your drawing such a Consequence from it; for if he did not look upon himself as safe here before his Army was disbanded, he could not think himself more so, when it was either wholly dissolved, or else was gone over to the Prince. And therefore I have much greater reason to believe, that his Return again to Town was only to comply with the present Necessity, and to wait for a fitter Opportunity to get away, there being never a Vessel then ready to transport him; especially if that be true which I have heard, that the King declared to a Person of Credit, *That the Queen had obtained from him a solemn Oath on the Sacrament, on the Sunday, that if she went for* France *on Monday, he would not fail to follow her on Tuesday following.* And if this were so, tho he was disappointed in his intended Passage, yet still was he under the same Obligation to the Queen: nor do I see any Transaction of his with the Prince of *Orange*, or with those of the Church of *England*, that can persuade me to believe otherwise; since his long Consultations with the *French* Envoy, and the Priests and Jesuits, could only tend to the taking new Measures for his Departure, or else how he might imbroil us further while he staid, by some faint hopes of new Treaties and Agreements.

But as for the other part of your Answer, whereby you would confute my Notion of the Lawfulness of Resistance, for the Defence and Preservation of our Religion established by Law, as also of our Liberties and Properties; I hope I shall let you see, that it is not I, but your self, who are mistaken in this matter. For first, all Writers on this Subject, and even Dr. *Sanderson* himself, in his Lectures of the Obligation of Conscience, do acknowledge that all Civil Government is principally ordained for the Good and Preservation of the People; and that the Good of the Governours is only to be considered secondarily, and in order to that: which if so, I pray tell me whether the Good and Preservation of the People ought not to be considered in the first place, since the End for which a thing is ordained, is always more worthy than the Means by which it is procured. And therefore I shall freely grant, that as long as the Safety and Interest of the King, and that of the People are all one, and can any ways consist together, and that he makes the Happiness and Preservation of the People to be the main end of his Government; I so far agree with you, that the Good or Preservation of the Prince or supreme Powers cannot (nay ought not) to be separated from that of the People: but when they once set up a separate Interest quite different from that of the People (as all Princes do, who turning Tyrants go about to inslave them) they then cease to be the true Heads of that political Body the Commonwealth; and thereupon the

Vid. Sand. de Oblig. Conscien. Prælect. V. §. 11. Prælect. VII. §. 4.

the Community or People become free, and at liberty, either to oppoſe or remove theſe artificial Heads, and to ſet up new ones in their room. So that ſince Similies are not Arguments, your Compariſon between a Natural and Political Body, hath only ſerved to impoſe upon your Judgment in this matter; and therefore I affirm that a Natural and Political Body do wholly differ in this point: for in a natural Body, the real Good of the Head cannot be ſeparated from that of the Body, nor the Good of the Body from that of the Head; nor yet can the Body alone judge of the proper means of its own Preſervation, nor when it is hurt or aſſaulted, but by the Head, which is the Principle of Senſe and Motion. But in a Political Body it is quite otherwiſe: for firſt, the Supreme Powers of a Commonwealth, which you ſuppoſe to be Head of this Political Body, do often purſue and ſet up an Intereſt quite different from (nay contrary to) that of the Body or People, and that not only to their prejudice, but alſo ſometimes to their deſtruction. And, ſecondly, when they do this, the Political Body, or the People will in evident and apparent Caſes judge for themſelves, let this Political Head ſay or declare what it will againſt it, and will when they are thus oppreſs'd and enſlav'd by thoſe that they have ſubmitted to as their Political Heads, and in ſuch caſes of Extremity, endeavour to free themſelves from the Severity of their Yoke.

M. Notwithſtanding what you have now ſaid, I am not yet convinced, that the King had no real Deſign to redreſs our Grievances, and to make a final Agreement with the Prince; for tho I do not deny but his Majeſty did converſe with ſome Prieſts, and others of his own Perſuaſion, as alſo with the *French* Envoy after his coming to Town, yet might this be for no ill Intent: and he did alſo converſe with divers Reverend Biſhops and Lords of our own Religion, to whom he ſtill expreſſed a great Deſire of making an end of all Differences between himſelf, the Prince, and the whole Nation. And this I ſuppoſe is the true reaſon why the Archbiſhop of *Canterbury*, (tho he ſign'd the firſt and ſecond Addreſſes to the Prince, upon his Majeſty's firſt withdrawing himſelf, yet) has been ever ſince ſo ſenſible of that Miſtake he then committed, that he has never appeared or acted in any Meeting of the Peers, nor yet in the Convention. And that his Majeſty, even at *Rocheſter*, did not lay aſide all thoughts of Agreement, and making up all Breaches between himſelf and his People, I could give you another Demonſtration, which is not commonly known, and which I had from a particular Friend, *viz.* That the King, during his Confinement there, ſent a Lady I could name on a Meſſage to two Reverend Prelates of our Church (together with an Emerald Ring from his Finger, as a Teſtimony of the Truth of her Commiſſion) to this effect, That his Majeſty, being ſenſible of the ſad Condition the Church of *England* as well as himſelf was in, and that there was no way ſo likely for him to get out of it, as by granting his Subjects, and particularly the Church of *England*, ſuch Securities for the Enjoyment of their juſt Rights and Liberties, as they could in reaſon demand; therefore he wholly left it to the Diſcretion of thoſe Biſhops, to make to the Peers and Biſhops that were then to meet ſuddenly, whatever Propoſals they ſhould think reaſonable on his behalf, for the Satisfaction of the Church, and Safety of the Nation, and that he would be ready to grant and ratify them whenſoever he ſhould be required.

F. This is indeed more than I ever heard before, and can ſcarce believe: but did the Lady go and deliver her Meſſage? And pray what Anſwer did thoſe Biſhops give to this fair Propoſal?

M. Yes, the Lady did deliver her Meſſage, and theſe Biſhops anſwer'd both to the ſame effect, That they had a real Duty and Affection for his Majeſty, and a great Deſire to ſerve him; but that conſidering the great Power of the Prince of *Orange*, and his preſent Averſion to any Agreement with his Majeſty, they very much feared that the Peers would not venture to give the Prince any ſuch Advice, or to interpoſe with him on his Majeſty's behalf: which in my opinion was very meanly and cowardly done of them, not conſidering their Duty to him as a King, and alſo thoſe particular Obligations they owed him as their Benefactor, and who had been the greateſt means of their being raiſed to thoſe Dignities in his Brother's Reign. Now I deſire to know, if this Meſſage had received its intended effect, what greater Demonſtration his Majeſty could have given

given to satisfy the World that he really intended to set all things right again, had he been permitted to do it.

F. I will not farther question the Truth of this Relation, tho perhaps I might have sufficient reason for it, since you say you had it from a Person of good Credit, and who was privy to this Transaction; nor yet will I be so inquisitive as to know the Names either of the Bishops, or of the Lady, since you make it a Secret: but yet notwithstanding, I do still very much question whether the King did ever really design to do what he then offer'd, and did not intend to put a sham upon their Lordships, to serve his present Occasion, and to see if he could divide the Bishops and Peers of the Church of *England* from the Prince of *Orange*'s Interest: and so by making them offer such Proposals as the Prince should not think fit to agree to, might make them declare against his Proceedings; which would have created great Divisions and Heart-burnings between those of the High Church-of-*England* Party and the Prince; and thereby have involved us again in fresh Disturbances, of which no doubt the King and the Popish Faction were like to receive the greatest Advantage: for you know the old Saying, *Divide & impera.*

But to let you see that I do not speak without just Grounds for my Opinion, let us examine every Circumstance of this matter: First, if the King had meant really, is it likely that he would have trusted a Business of that high moment to a Woman, when he had then the Lords of *Ailesbury* and *Arran*, besides other Protestant Gentlemen then waiting on him, and they were much fitter to be trusted than this Lady, let her be whom she will? Or can any one believe if the King had meant really, that he would not have sent his Proposals in Writing, since he very well knew from the Prince's Declaration, as well as the Bishops Petition and Addresses to him, what the whole Nation, and the Church of *England* in particular, required of him? But forsooth he must send a loose and uncertain Message, which it was in his power to disown whenever he pleased, by saying, the foolish Woman mistook his Meaning; and she also might be so much his Creature, as to take the Fault wholly upon her self, whenever it should serve the King's turn so to do. And therefore I think it was very wisely and honestly done of those Reverend Prelates to refuse medling in such a tickliſh Affair; since it is plain by his not making any such Proposals to the Prince of *Orange* himself, or the Lords about him, that he was not to be made privy to it, but rather it should be carried on, whether he would or no, and without giving him any satisfaction in his particular Concern as to the Prince of *Wales*. And lastly, I desire you farther to consider, whether the King might not hereafter, whenever he had power, have made void whatever Agreements or Concessions he should have then granted either to the Church of *England*, or to the Nation, by pleading afterwards, that they were obtain'd by Duress, whilst he was not *sui juris*, but under the power of the Prince of *Orange*.

I have but one thing more to add, which I before omitted, which is to make some Reply to what you said concerning the mischief that the Mob has done upon Houses, Forests, and Parks, since his Majesty's first Departure: and therefore granting the Matter of Fact, that much Mischief and Spoil has been committed; yet I deny that it is more than has been done by the most Arbitrary Kings since the Conquest to this day, as you are pleased to affirm: for I believe you forget the thirty Parish-Churches and Towns, which our Historian tells us, your *William* the Conqueror, and his Son *Rufus*, destroy'd, when they enlarged new Forests, and therein acted contrary to their Oaths, like true despotick Tyrants. You likewise forget the miserable Spoil and Waste which King *John* and *Henry* III. made upon the Houses, Castles and Estates of the Barons and Gentry of *England*, who opposed them in their unjust and illegal Violations of *Magna Charta*; besides other Tyrannical Actions of the same kind committed by King *Edward* and *Richard* II. too long here to relate. But if these Mischiefs were done you speak of, whom have we to thank for it but the King; who stealing away on a sudden, without leaving any Orders for the Government of the Kingdom, all Persons in Commission, either Civil or Military, doubted whether their Commissions were not at an end by the King's deserting the Government as he did? Besides, you very well know that the common People were so enraged against the Popish Faction, for so many insolent

ſolent Actions they had committed in King *James*'s Reign, and ſo many apparent Breaches and Contempts of all the Laws made againſt them, that you cannot wonder, if when they were rid of the Fear of the *Iriſh*, and of King *James*'s Army, they kept their Arms in their hands, and took that opportunity of revenging themſelves upon thoſe they looked upon as the Authors of all this Confuſion. So that except the rifling of the Houſe and Chappel of the *Spaniſh* Ambaſſador, which I grant was contrary to the Law of Nations, there were very few Popiſh Houſes plunder'd or ſpoil'd, but ſuch as had before render'd themſelves ſome ways or other obnoxious to the Laws, by their Apoſtacy and accepting of Commiſſions, which they were utterly diſabled by Law to take: and tho to my knowledg the Deputy Lieutenants, and Juſtices of the Peace, did their utmoſt in moſt Counties of *England*, to quell thoſe Riots and Diſorders, yet the Mobile were too much enraged, and too numerous to be commanded, when like a vicious Horſe, whoſe Rider is caſt off, they run away with the Bridle in their Teeth.

M. I confeſs you have made the beſt Apology for the Mob that the matter will bear; and I cannot deny, in compariſon of what has been done in other Nations on the like Occaſions, it was a very civil Mob: but yet this may ſerve to let us ſee the Danger of your Doctrine of Reſiſtance, ſince by the ſame Law, by which they then pull'd down and plunder'd the Popiſh Chappels, and *Roman* Catholick Houſes, by the like Right they might have done the ſame Violences upon any other Nobleman's or Gentleman's Houſe in *England*, whether a Papiſt or Proteſtant, that they had a ſpleen to; ſince it was but their crying out that he was a Papiſt, or at leaſt a Favourer of them, and then it had been enough to make them ſuffer, as if they really had been ſo: as I could tell you of my own knowledg, of a very honeſt Gentleman of my Acquaintance, who becauſe he was a true Son of the Church, and had been always a Loyal Subject to his Majeſty, and a great Enemy to the Whig Faction in the Country, and had alſo put the Law ſeverely in execution againſt the Diſſenters, was like to have had his Houſe plundered by the Fanatick Mob of a certain Town, from which this Gentleman's Houſe was not far diſtant.

F. If you pleaſe to conſider it, this is a very unjuſt Inference from our Doctrine; for theſe Actions were not any Reſiſtance of the Supreme Powers of the Nation, but certain violent Actions or Revenges, which the Rabble thought they might take upon thoſe whom they looked upon as publick Enemies, when there was no Civil or Military Power in being that was of ſufficient Strength to keep them in order. But if you pleaſe to call to mind my Poſitions, I do by no means allow the Rabble or Mob of any Nation to take Arms againſt a Civil Government, but only the whole Community of the People of all Degrees and Orders, commanded by the Nobility and Gentry thereof. And tho I grant the People may be ſometimes miſtaken in the Exerciſe of this Right (as what is there, tho ever ſo lawful, that may not be abuſed?) yet I think you will grant, that the bare Abuſe of a lawful thing is no ſufficient Ground for the taking away the Liberty of exerciſing it; and I think I have ſufficiently proved, that the total Denial of this Liberty would be of far worſe conſequence to whole Nations and Kingdoms, nay to all Mankind, than the allowing of it (as thoſe of my Opinion do) only in caſes of extreme Neceſſity, and when no other Remedy will ſerve.

M. I will not renew this old Diſpute again about Reſiſtance; we ſufficiently know one another's Minds about it, and are not, as I can ſee, like to bring over either of us to the other's Opinion. But ſince I know you have ſtudied the Common Laws, and Hiſtories of this Kingdom better than I, I cannot forbear making divers juſt Reflections upon the late Proceedings of the Convention: for tho indeed they had no Legal Authority to aſſemble upon the Circular Letters of a Foreign Prince, yet ſince this was the greateſt (if not the only Liberty we had left us) and the only Means to procure a Settlement, if it had uſed that Power as it ought to have done, I will not quarrel or diſpute the Legality of their Meeting; but then they muſt uſe it only for lawful Ends, and ſuch as in their private Capacities they were obliged to purſue if they were able. Therefore when they aſſembled, if they would have maintain'd the due Rights of Monarchy and Succeſſion in this Kingdom, ſure they ought, in the firſt place, to have enquired what was become of the King,

where

where he was, and who forced him to go away: And when they had known that, they ought then to have join'd in addreſſing to the Prince, that ſince he had declar'd that he came not to conquer this Nation, but only to free it from Arbitrary Government, and reſtore it to its juſt Laws, there could be no ſure Enjoyment of theſe without the King, therefore he would join with them in ſending to him, to deſire him to return to the Government of theſe Kingdoms, and to govern them according to Law. But inſtead of this they not only neglected taking any notice of the King, as if he were not at all in being, but have alſo refuſed to receive thoſe gracious Letters he ſent them, in which he promiſed *to amend all former Errors*, and to govern according to Law: which certainly deſerved to be taken notice of, ſince coming from their Lawful Prince, they ought at leaſt to have propoſed ſome Terms to him, before they had proceeded to that raſh and unparallel'd Vote, which I deſire I may read to you word for word, becauſe I intend to examine every Clauſe of it. Reſolved,

That King James II. *having endeavoured to ſubvert the Conſtitution of this Kingdom, by breaking the Original Contract between King and People; and by the Advice of Jeſuits and other wicked Perſons, having violated the Fundamental Laws, and having withdrawn himſelf out of this Kingdom; hath abdicated the Government, and that the Throne is thereby vacant.* I ſhall make bold to conſider each of theſe Clauſes, one after another: And therefore firſt pray take notice, that this Vote of the two Houſes coſt above a Week's Debate in the Houſe of Lords, which paſt in the Houſe of Commons in two or three days; becauſe divers of the Lords, as well Temporal as Spiritual, did with great Honour, Reaſon and Reſolution oppoſe, and proteſted againſt it to the laſt: and it was carried at laſt by a very ſmall Majority. But that we may examine each Clauſe in this Vote: firſt, it is here only ſaid, *That King* James II. *endeavoured to ſubvert the Conſtitution of this Kingdom*; not that he really did it, which is as much lower than you are pleaſed to put it, as endeavouring a thing falls ſhort of actually doing it: and therefore it is very hard to declare a Prince to have forfeited, or abdicated his Kingdom, for bare deſigning and endeavouring; ſince thoſe things that you bring to prove it, may bear a much more favourable Interpretation, eſpecially with Subjects, who are no fit Judges of the private Deſigns of Princes, which may oftentimes tend to quite other Purpoſes than what we ſuppoſe.

As for the next Clauſe, *by breaking the Original Contract*; I have heard that divers of the Lords and Biſhops, who were for the King againſt this new Invention of an Abdication, put the other ſide very hard to it, to make out this Original Contract, and deſired them to ſhew in what part, either of our Common or Statute Law, it was to be found; for they knew no ſuch Maxim in the Common Law, nor no ſuch Clauſe in any Statute, antient or modern.

And tho I confeſs you have undertaken to prove to me, that there is ſuch a thing, yet it has been only by far-fetch'd Conſequences, and from the old Form of Government among the *Saxons*, of above 600 Years ſtanding; which if there were any ſuch thing, it is now become ſo antiquated, and out of date, that neither the King himſelf, nor yet our Lords, Biſhops or Judges, except ſome few Lawyers of your Kidney, ever before now thought of any ſuch thing. I paſs by the next Clauſe, *by the Advice of Jeſuits*, &c. becauſe I cannot ſay by whoſe Advice thoſe things, which you call Breaches of the Fundamental Laws, were acted: but as for the next, wherein the Violation of theſe Fundamental Laws is laid to his charge, I confeſs you have given me a pretty large Catalogue of theſe Fundamentals at our ninth Meeting, which yet you cannot ſay are to be found together in any one Law; but are to be picked up here and there out of *Magna Charta*, and divers other old Statutes. But ſince the King and Parliament have declared in the firſt Year of King *James* I. that there are ſuch ſuch things as Fundamental Laws and Privileges, I will not ſay there are none; yet certainly any Breach of them by the King was never intended to create a Forfeiture of the Crown: for if it had, I think there would have been but few Kings or Queens of *England*, who would not have forfeited, for ſome one or more of theſe Breaches, committed in their Reigns, by the Advice of their Judges and Counſellors, as theſe were lately

by

by the King: for I ſuppoſe you cannot expect that Princes ſhould ſee any otherwiſe in matters of Government than by other Mens Eyes, nor hear but by other Peoples Ears. And therefore if the wilful Breach of theſe Fundamentals muſt cauſe a Forfeiture or Abdication of Government (call it which you pleaſe) methinks it had been reaſonable for the Parliament to have given a Liſt of theſe Fundamentals in ſome one Law, that the King might have been ſure to have avoided the tranſgreſſing of them, and fear of loſing both his Royal Dignity, and his Penalty ought alſo to have been declared.

But the next Clauſe deſerves more particular Conſideration, *(viz.) And having withdrawn himſelf out of the Kingdom, hath abdicated the Government.* Now I muſt confeſs, it is the firſt time that ever the King's going away, for fear of loſing both his Royal Dignity and his Life, and that with a declared Deſign and Intention to return again to the Exerciſe of the Government, whenever he might do it with ſafety, ſhould be judged a wilful Deſertion or Abdication. D.D. *p.* 147. I am ſure there is nothing in our Common or Statute Laws, that can at all warrant this Notion; for Common Law is nothing but antient Uſage and immemorial Cuſtom. Now Cuſtom ſuppoſes Precedents and parallel Caſes; but it is granted on all hands, that the Crown of *England* was never judged to be abdicated, by the withdrawing of the Prince, before now: And therefore it follows, by undeniable Conſequence, that this Opinion can have no Foundation in the Common Law, becauſe there is not ſo much as one ruled Caſe to prove it by.

But if we come to thoſe Precedents we have in our *Engliſh* Hiſtory, I ſhall give you ſuch of them as I can remember. We read in the Reign of *Edward* II. that when he fled from the Forces of his Wife and Son, who had ſeized the Kingdom by Force, the King being deſerted by his Soldiers and Followers, endeavoured to get into the Iſle of *Lundy* for ſafety; but not being able to make it, was driven back, and taken in diſguiſe at the Abbey of *Neath* in *Wales*. Now it is certain, that King *Edward* went away without appointing any Governour of the Realm in his abſence; and if this Notion of an Abdication had been then taken for Law, the Parliament needed not to have been put to their ſhifts to find out ſo many other matters for which to depoſe him. The next is the like caſe, of *Edward* IV. who when the Earl of *Warwick* had raiſed a great Army againſt him on a ſudden, and forced him to fly with a few Followers to the Duke of *Burgundy*, his Brother-in-law, though *Henry* VI. was again put into the Throne; yet was it not objected againſt King *Edward*, that he had loſt his Title to it, or that it was become vacant by his deſerting it. And if theſe two are not parallel Caſes, and do not reach the matter in hand, I deſire you to ſhew me wherein they differ from the preſent Caſe of the King.

But I am come now to the laſt Clauſe of all, *That the Throne is thereby become vacant*, which ſeeming only to refer to the Clauſe of Abdication, I think I have ſaid enough already againſt that Notion; therefore we will admit at preſent, for Diſcourſe ſake, that the King had really abdicated the Government, by deſerting the Kingdom, and thereby wholly loſt his Regal Power. Now according to the Fundamental Laws and Cuſtoms of this Realm, which is, you know, an Hereditary Monarchy, the eldeſt Son, or other next Heir, either Male or Female, immediately ſucceeds the King his Father, or other Predeceſſor, and that without any *Interregnum* at all; ſo that the Reign of the Succeſſor immediately begins from the very moment the laſt King or Queen deceaſes. This being the ſettled Law, I cannot ſee any one ſtep the Convention has made in their whole Proceeding that can be juſtify'd by the Fundamental Laws of the Land, or the Laws of Equity and Juſtice; for Equity has no quirks in it, and never lies at a catch: Reaſon is always juſt and generous, Ib. *p.* 149. it never makes Mens Misfortunes an Accuſation, nor judges in favour of Violence; for indeed what can be more unrighteous (tho in the Caſe of a private Perſon) than that any one ſhould ſuffer yet worſe for being injured, and be barred his Rights for the Injuries of others? If a Man ſhould forfeit his Houſe to thoſe who ſet it on fire, only becauſe he quitted it without giving ſome formal Directions to the Servants, or be obliged to loſe his Eſtate for endeavouring to preſerve his Life; I believe it would be thought a ſtrange piece of Juſtice in any Law whatever: and if this be proved illegal, the Title of

your preſent King and Queen being wholly founded upon the Validity of this Vote, will prove ſo likewiſe.

F. Well, you have made a pretty long Diſcourſe in defence of King *James*'s Actions, as well as of his late Deſertion, and I have heard you patiently, becauſe I grant you have put a great deal of matter in a few words; and I think all that can be juſtly urged in your King's defence. I ſhall therefore begin with the firſt falſe ſtep that you ſay the Convention made, in not inquiring after the Cauſes of the King's departure, whither he was gone, and their not voting of an Addreſs to the Prince, to deſire his Return. As for the firſt of theſe, they were not at all oblig'd to do it, ſince a great many of the Peers and Biſhops, and Members who were then in Town, very well knew the Cauſes of the King's Departure, and that he either went away voluntarily, or at leaſt without any other neceſſity than what he had brought upon himſelf, by his own evil Government, or the ill Counſel of others; which may be eaſily prov'd by ſeveral Circumſtances: for it is very well known, that above a Fortnight before the King went away, the Lord *D*—— and Mr. *Brent* did not ſtick to declare that it was neceſſary the King ſhould withdraw himſelf. So that it is plain the Popiſh Faction knew of it long before it was done, and that it proceeded wholly from their Advice appears further by a Letter to the King when he was at *Salisbury*, which can be yet produc'd: he was there told that it was the unanimous Advice of all the Catholicks at *London*, that he ſhould come back from thence, and withdraw himſelf out of the Kingdom, and leave us in *Confuſion*; aſſuring him, that within two years or leſs, we ſhould be in ſuch Confuſions, that he might return *and have his Ends of us.* Now if the King was pleaſed to take ſuch a deſperate Counſellor's Advice, and thereupon do all he could to quit the Kingdom, the Cauſe of his going is too evident, as well as his deſign of returning, to *have his Ends of us* (as they phraſe it) that is, in plain *Engliſh*, to have both our Religion, Liberties, and Properties wholly at his diſpoſal. Nor in the next place needed they inquire where he was, for every one knew he was gone into *France*, to the greateſt Enemy of our Religion and Nation, as well as of the Prince; and therefore it had been altogether unſafe and indiſcreet for them to have joined in an Addreſs to the Prince for his return: for whilſt he was in ſuch hands, what hopes could we have of his returning to us with better (but rather worſe) Affections towards the Church of *England* and this Nation, than what he carried with him?

But you ſay they refus'd to receive his Letters; for my part I do not know that he ever ſent any, at leaſt to the Houſe of Commons. I heard indeed, that one of the King's ordinary Servants was at the Door of the Houſe with ſuch a Letter, but that he was ſo inconſiderable, that no body would receive the Letter, or make any mention of it in the Houſe: and it was very ſtrange, that the King ſhould have never a Friend there, who had ſo much Courage and Kindneſs for him, as would take the Letter and move for the Reading of it, tho he had run the riſque of being committed for his pains: ſo that the Houſe of Commons is not to be blamed for not receiving a Letter which was never offer'd them. But as for the Houſe of Lords, I have been told it was mov'd to be read there, but it was carried in the Negative, becauſe it was not brought by a Perſon of ſufficient Credit; and therefore it was the King's fault if he would imploy ſuch mean Perſons in a matter of that great moment. And indeed if we may give credit to thoſe Copies of theſe Letters which I have ſeen, they retain'd rather a Juſtification of his paſt Actions, than an Acknowledgment of thoſe Violations he had committed upon our Laws: for as to his promiſing to govern by Law, there is nothing in that, for he never yet own'd that he govern'd otherwiſe. 'Tis true, there is in one of thoſe Letters an Expreſſion of his amending *paſt Errors*; but thoſe are general words, and may mean ſuch Errors, as he had committed in the ill management of his Deſigns, which he would have mended, whenever he was to do the like things again. This may very well be the true Senſe of a Letter, it is very likely, written with the Equivocation of the Jeſuits, and Advice of a *French* Cabal.

But you would have him ſent for, to return upon certain Terms: I wonder you ſhould be ſo undutiful, as to urge it; ſince if he is an abſolute King, without any Conditions whatever, he ought certainly to be reſtored, as King *Charles* II. was, without any Terms or Conditions at all; and rather ſo, than

with

with them, ſince he cannot give us greater aſſurances for his keeping them than he has already broke, unleſs you can ſuppoſe, he would give us the Guaranty of the Pope and the King of *France* for their Performance: the former of whom believes, that there is no Faith to be kept with Hereticks; and for the latter, ſuppoſing the King and him to paſs his word for the Performance of theſe Conditions, pray conſider whether the Bond of two Bankrupts can ever paſs for a good Security. And ſo much for the Letters and Addreſs.

I come now, in the next place, to conſider your Exceptions againſt that Fundamental Vote of the Houſe of Commons, concerning King *James*'s Abdication of the Government, and thereupon declaring the Throne vacant. To begin with your firſt Exception, I think it is a very ſmall one, that becauſe this Vote declares the King to have endeavour'd to ſubvert the Conſtitution of this Kingdom, that it was very unjuſt to declare him to have abdicated the Government for a bare *Endeavour*, becauſe we are ignorant of the true Ends of the Actions of Princes. To which I anſwer, that in this Caſe, a bare Endeavour ought to be ſufficient; if it be ſo evident, that there can be no diſpute about it: for if he had once actually ſubverted it, the two Houſes could never have met to have made this Vote; and if in the caſe of Kings, the very bare Deſign or Endeavour to deſtroy them be ſufficient, tho it be never reduc'd into Act, I cannot ſee why by the ſame Rule the endeavours of Kings to deſtroy the fundamental Conſtitution of a mixt or limited Kingdom ſhould not have the like Conſtruction in reſpect of them: ſince according to the Maxim you but now cited (and which I have ſufficiently juſtified) that in all ſuch Governments, the Safety and Preſervation of the People (that is, of the Government they have eſtabliſh'd) is to be prefer'd before that of the King alone, when acting in a direct Oppoſition thereunto; or otherwiſe, it would be in the King's power to deſtroy the Conſtitution whenever he pleas'd: ſince according to your Doctrine, the bare endeavouring it would be nothing; and after he had once brought it to paſs, it would be then too late to retrieve it.

But that the King did really endeavour thus to ſubvert the fundamental Conſtitution, appears not only by his cloſeting and threatning Members to turn them out of their Places, if they would not ſubmit to his Will in taking off the Penal Laws about Religion, whereby all Freedom of Voting would have been quite taken away: but when the King ſaw this would not do, he then fell a new modelling of Corporations, and by bringing *Quo Warranto's* againſt their Charters, to get it into his own power to nominate, or approve of all Mayors, Aldermen, and Common Council Men, who in thoſe Corporations having the ſole Elections of Parliament-Men, he would thereby have had the naming of them alſo in his power. Your next Exception is againſt their declaring him to have broke the Original Contract between the King and the People; for that you are not yet perſuaded there was any ſuch thing, becauſe we cannot ſhew it you in any Common-Law or Statute-Book, written in expreſs words. As for the Statute-Law, I grant there is no ſuch expreſs Contract to be found in any Statute; yet doth it not therefore follow, that there is no ſuch Contract by the antient Common-Law of the Kingdom. Now that our fundamental Laws are not all to be found in Writing is no wonder; ſince it is a Maxim of our Common-Law, that it was not a Law, becauſe it was written, but it was written becauſe it was a Law; for it was a Law when it was only in the Breaſt and Heads of the King and People of this Nation, without any writing at all: and you your ſelf muſt grant, that if the Hereditary Succeſſion to the Crown be a fundamental Conſtitution, it is notwithſtanding no where to be found in Writings as I know of, but the contrary is aſſerted by divers Acts of Parliament. But that there is ſuch a thing as an Original Contract, I ſhall prove from ſuch a neceſſary Conſequence as I think cannot be denied: for as that Statute of King *James* I. ſets forth (which I have now cited) and your ſelf have already acknowledged, there are ſuch things as fundamental Laws (that is, Laws that are as antient as the Conſtitution of the Government) there muſt have been alſo an implicit fundamental Covenant or Contract on the King's part, that he would maintain them without any Violation; and this is that we mean by an Original Contract. And if it were not ſo, it had been the moſt fooliſh and unreaſonable thing in the World to require every King to ſwear before he

was crown'd, that he would maintain the Rights of the Church, and the antient Laws and Customs of the Kingdom. And that this was antiently look'd upon as a renewal of this Original Contract, appears by all our antient Historians, who till the Reign of King *Edw.* I. never give the next Heir the Title of King, but of Duke of *Normandy*, till he was actually crown'd, and had taken his Coronation-Oath: and for this I desire you would consult all our antient Historians since your Conquest, beginning with *Ingulf* and *Eadmerus*, and ending with *Tho. Walsingham.*

But as for your Exception against his violating of the fundamental Law, it is yet more trivial: for you cannot deny that there are such things; and if so, surely a King may violate them if he pleases: and therefore your excuse for the King's Breach of them, because they are not to be found together in any one place, but are to be pick'd up here and there from *Magna Charta*, and other Statutes, makes nothing against the validity or the possibility of his knowing them: for as before they were reduc'd to Writing by those Statutes (which only declare and confirm the antient Common Laws and Liberties of *England*) they existed (as I said but now) in the Heads and Hearts of the King and People; so when divers Kings of *England* by their tyrannical and illegal Practices had made divers Violations of these fundamental Rights and Privileges, there then grew a necessity of new granting and confirming those Liberties, and consequently of reducing them into Writing, which there was not before. And that is the true Reason why *Magna Charta*, and other Statutes, made in the time of *Henry* III. *Edw.* I. and divers others of their Successors, were made either for their Explanation, or Ratification, according as occasion requir'd; and as several Princes had more or less violated these fundamental Laws of the Government: for before they had so done, there was no need of the Parliament's making, or declaring any Law about it. But if the King would have but read and considered the Articles exhibited in Parliament against *Edward* and *Richard* II. he might easily have seen the Laws all together, that will make a Prince to be declar'd by his Subjects to have forfeited his Crown.

But that King *James* had before his Desertion endeavour'd to extirpate the Protestant Religion, the Laws and Liberties of the Nation, appears by those several Articles the Convention has given us in their late Declaration, which they presented to King *William* upon their declaring him and his Princess King and Queen of *England*, and to which I shall refer you, since it is commonly to be had: you know it consists in the recital of divers things, the Violation of which has been always counted in all Kings Reigns a Breach of the Original Contract.

I come now to the last Clause save one you except against, *viz.* 'That having withdrawn himself out of the Kingdom, he hath abdicated the Government.' Now your main Argument against it is, That the King's Desertion of the Government being only for fear of his Life, or of being depos'd from his Royal Dignity, he could not by his going away be said to abdicate or renounce the Crown, since he went away with an intention to return, and repossess it as soon as with safety he might. To which before I make any answer, I must freely own, that were this the Case as you have put it, I think there would be no great dispute about it; since I grant that a King who is thus forc'd to fly for fear of his Life, ought not to have any such Injustice put upon him. But if you please better to consider it, the Case was quite otherwise: for I have already prov'd that when King *James* first went away, he had then an Army about him, was free, and in his own Palace, and was at that time in actual Treaty with the Prince; nor had *London*, nor any considerable strong Place in *England* then surrender'd it self to the Prince: so that if there was any necessity for his Departure, but what he had brought upon himself by his refusing to call a Parliament, burning the Writs, and sending away the Queen and Child, together with the main Instrument of Government, the Great Seal of *England*; this must certainly be look'd upon as a wilful Forfeiture or Abdication of the Government: and it is from this first going away, that I suppose the Convention dates his Abdication. And tho it is true, after his return to *London* he took upon him to make an Order in Council to stop the further pulling down and plundering Popish Chappels, and Papists Houses; yet was it sign'd by very few of the Council, and almost only by those who had been in some Office or Place of Trust: so that tho he was then own'd by them, yet

since

ſince that Order did only ſerve to ſhew his Zeal for the Popiſh Party, and was never obeyed or taken notice of by thoſe to whom it was directed; and that neither the Prince nor the City of *London* owned him afterwards, ſince it had already delivered it ſelf up to the Prince, and had as well as the Peers invited him to repair to that City; I cannot ſee that ſo ſlight an Act, as this Order of Council, ſhould be counted a Return to, or a Re-eſtabliſhment in the Throne: ſince the King had not only loſt the Crown by his wilful Departure, without calling a Parliament, or giving the Prince any ſatisfaction in the great Buſineſs of the pretended Prince of *Wales*, or the Nation, by repairing thoſe deſperate Breaches he had made upon our fundamental Laws; but had alſo loſt his Title to the Crown, by being conquer'd by the Prince in open War, as I ſhall prove more at large another time. So that if you pleaſe better to conſider this Vote of the Convention, you will find that theſe words, *had abdicated the Government*, do not only refer to the laſt Clauſe of his having withdrawn himſelf out of the Kingdom, but to every one of the foregoing Clauſes, *viz.* "His having endeavour'd to ſubvert the Conſtitution of this "Kingdom, his breaking the Original Contract, and his having violated the "fundamental Laws." So that it is plain, their notion of Abdication was not fixed only in the King's Deſertion, or bare withdrawing himſelf out of the Kingdom, but from his renouncing the legal Title by which he held the Crown, and ſetting himſelf up as a deſpotick Sovereign, and ruling by a mercenary Army: and therefore all that you have ſaid about the King's quitting the Government with a deſign to return to it again, as ſoon as with ſafety he might, is altogether vain; for as he went away becauſe he would not govern any longer as a King by Law, ſo hath he yet given us no ſatisfaction that he would not return again to govern worſe than he did before, had he an opportunity ſo to do; that is (as the Letter I cited but now phraſes it) *to return, and have his Ends of us.* So that this being indeed the Caſe, I think I can very well juſtify the laſt Clauſe in this Vote, that the Throne was thereby vacant.

M. Sir, you have ſpoke a conſiderable time, and I doubt more than I can diſtinctly remember to anſwer as I ſhould: therefore before you proceed to this laſt Clauſe of the Vacancy of the Throne, the Diſpute about which I foreſee may hold longer than upon any of the former; pray give me leave to reply to what you have already ſaid in juſtification of all the other Parts of this Vote. In the firſt place I will not deny, but that if the King had once got the power of making Mayors, Aldermen, and other Officers in Corporations at his pleaſure, it would have gone a great way towards the making the Majority of the Parliament-men; nay, I likewiſe grant, that by his diſpenſing Power he might have made what Papiſts, or other Perſons he pleaſed, Sheriffs in any County, who might have made ſuch return of Knights of Shires as he ſhould have thought fit: yet I ſuppoſe this would not have been to the Subverſion of the Conſtitution of the Kingdom, which I think I have proved to conſiſt originally in the King alone, before any great Councils or Parliaments were inſtituted.

And as for thoſe Violations of the fundamental Laws and Liberties of this Kingdom the Declaration inſtances in, I think ſeveral of them may very well be juſtified by antient Precedents and adjudged Caſes in Law; and therefore were ſo far from being Violations, that they are no more than the King's exerciſing of his due Prerogative. And tho at our ninth Meeting I had not time ſo well to conſider theſe Matters, as alſo becauſe I was not then prepared to defend the King's Proceedings, I ſhall therefore make bold to examine the moſt conſiderable of thoſe Articles, which the late Declaration ſuppoſes did ſo highly tend to ſubvert the Proteſtant Religion, and the Laws and Liberties of this Kingdom. I ſhall begin with the firſt, *viz.* "His aſſuming and exerciſing a "Power of diſpenſing with, and ſuſpending the execution of Laws, without "Conſent of Parliament." Which Power, let me tell you by the way, was not aſſerted to diſpenſe with all Laws or Statutes whatſoever, but only ſuch as the Subject has no particular Cauſe of Action in, and where the Damage that may ariſe by it doth not concern the publick Safety, of which the King is ſole Judge, and not any particular Man's Intereſt. I ſuppoſe you cannot but have read that learned and ſhort account of the Authorities in Law, upon which Judgment was given in Sir *Edward Hales*'s Caſe, written by Sir *Edward Herbert*, Lord Chief

Diſpenſing Power.

Chief Juſtice of the Common Pleas, in vindication of himſelf; wherein I think he proves beyond any poſſibility of a juſt Anſwer, that the Diſpenſation
Pag. 6, 7. granted to Sir *Edward Hales* to receive a Commiſſion, and act as a Colonel of Foot, was good, notwithſtanding his not having received the Sacrament, and taken the Oaths and Teſt appointed by the Statute of the 25th of
Chap. 2. *Charles* II. where he firſt proves from my Lord *Coke*'s Authority, that it belongs to the King's Prerogative to diſpenſe with all poſitive or penal Laws, the Penalty whereof is only popular and given to the King. And to ſhew you that my Lord *Coke* (who was never counted any great Friend to the King's Prero-
Fol. 11, 12. gative) was not ſingle in this Opinion, he gives you alſo the Authority of the Year-Book of *Henry* the VIIth, where it was owned by all the Judges, "That "the King can diſpenſe with all things which are only *Mala Prohibita*, and not "*Mala in ſe*, tho expreſly forbid by Act of Parliament; for tho (ſays the "Year-Book) before the Statute, coining of Mony was lawful, but now it is "not ſo, yet the King can diſpenſe with it." So that, ſay I, if he can diſpenſe with that which is now made Treaſon by *Edward* III. he may certainly diſpenſe with all other penal Statutes of a leſs nature.

But becauſe I grant there is ſome Difference between common penal Laws, which barely prohibit the doing of ſome things under a Penalty; and this Act, in which there is alſo an expreſs Clauſe of *Non-obſtante*, that all Licences or Diſpenſations, contrary to this Act, are declared abſolutely void: yet the ſaid Lord Chief Juſtice likewiſe proves, that this Clauſe of *Non-obſtante* is void; and he makes this out, not only from conſtant Practice in other Statutes of like nature, but alſo from the Opinions of *Plowden*, and the ſaid Lord *Coke*.
Chap. 8. 1. As to the Statutes, "There is a Statute of the 23d of *Henry* VI. that no "Man ſhall be Sheriff for above a Year. 2. That all Letters Patents, made "for Years or Lives, ſhall be void. 3. That no *Non-obſtante* ſhall make them "good (which ſhews that the Parliament thought the King could otherwiſe "have diſpenſed with this Act by a *Non-obſtante*.) There is likewiſe in this "Act a Penalty of 200 *l.* and the Party is alſo diſabled from bearing the Office "of Sheriff in any County of *England*, and alſo every Pardon for ſuch Offence "ſhall be void." So that in all reſpects this Statute anſwers that of K. *Charles* the Second now in diſpute, only in this the Penalty to the Proſecutor is higher, *viz.* 500 *l.* and the Diſability is not only from holding that Office, but any other whatſoever for the future.

Vid. *the Year-Book*, 2 H. 7. T. M. And yet it was reſolved by all the Judges of *England*, in the ſecond of *Henry* VII. in the *Exchequer-Chamber*, upon the King's Power of diſpenſing with this Statute of the 23d of *Henry* VI. that the King's Diſpenſation with that Statute was good; and ſo it hath been held ever ſince: for it is very well known that the King hath not only exerciſed this Prerogative of diſpenſing with this Statute, for divers Sheriffs holding more than a Year, but hath alſo granted this Office for Life, as appears by the ſame Caſe cited by *Plowden* (in his *Commentaries*) between *Grendon* and the Biſhop of *Lincoln*, where he expreſly
Pag. 502. ſays, "That notwithſtanding this Statute of *Henry* VI. the King's Grant to "the Earl of *Northumberland* to be Sheriff during Life, ought to have a "Clauſe of *Non-obſtante*, becauſe of the preciſe words of the Statute before-"mentioned; and with ſuch a Clauſe of *Non-obſtante* the Patent to the Earl "was good."

Pag. 18. But yet my Lord *Coke* is more expreſs in his Opinion concerning theſe Diſpenſations; for in his twelfth Report he has theſe words: "No Act can bind "the King from any Prerogative, which is ſole and inſeparable to his Perſon, "but that he may diſpenſe with it by a *Non-obſtante*, as a Sovereign Power to "command any of his Subjects to ſerve him for the publick Weal: and this "ſolely and inſeparably is annexed to his Perſon. And this Royal Power can-"not be reſtrained by any Act of Parliament, neither *in Theſi*, nor *in Hypo-"theſi*, but that the King by his Royal Prerogative may diſpenſe with it; for "upon the Commandment of the King, and Obedience of the Subject, does his "Government conſiſt." And therefore for this reaſon he allows this Judgment of all the Juſtices in *England*, in the 2d of *Henry* VII. to have been according to Law, that judged the King's Diſpenſation, with this Statute of *Henry* VI. to be good; and he alſo inſtances in another Statute, in the 4th of
Chap. 31. *Henry* IV. in which it is ordained, "That no *Welſhman* ſhould be Juſtice, Chamberlain,

" berlain, *&c.* nor any other Officer whatſoever, in any part of *Wales*, not-
" withſtanding any Patent made to the contrary, with Clauſe of *Non-obſtante*
" *licet ſit Wallicus natus:*" and yet without queſtion the King may now grant thoſe Offices to *Welſhmen* with a *Non-obſtante*. And the ſaid Lord *Coke*, in *Calvin*'s Caſe, tells us, " That the ſame was reſolved by all the Judges of *Eng-*Rep. VII. *p.*
" *land*, (*viz.* in the 2d of *Henry* VII.) that every Subject is by his natural Al- 14.
" legiance bound to ſerve and obey his Sovereign, *&c.*" And he then proceeds to recite the Statute of the 23d of *Henry* VI. and the Opinion of the Judges above-mentioned, and gives us this Reaſon for it, for that the Act could not bar the King of the Service of his Subject which the Law of Nature did give unto him. This is there reported as the Senſe of all the Judges of *England* in King *James*'s time; and therefore ſince this has been ever the Opinion of the Judges, and a conſtant Prerogative exerciſed by the King ever ſince, I deſire you would ſhew me any Difference, why the King's Diſpenſation to a Sheriff ſhould be good for the holding of his Office for above a Year, notwithſtanding the Statute of *Henry* VI. and yet a Diſpenſation for the taking or holding any Office or Command Civil or Military, without taking the Oaths and Teſts appointed by the 25th of *Charles* II. ſhould be declared a Breach of our fundamental Laws: for I can ſee no manner of difference between them, ſince their Preambles ſet forth the Deſigns of the Law much to the ſame purpoſe, *viz.* " That of making the Statute of *Henry* VI. is the inſupportable Damage of " the King and his People, Perjury, Manſlaughter, and great Oppreſſion." And in the Statute of King *Charles* II. the Miſchiefs recited are of a much leſs nature, *viz.* " For preventing Dangers which may happen from Popiſh Re-
" cuſants, and quieting the Minds of his Majeſty's good Subjects." So that the Subject of neither of theſe Acts being *Mala in ſe*, but only *Mala prohibita*, if the King might diſpenſe with the one, he may certainly do as much with the other for the ſame reaſon.

Therefore if this be ſo, I need not ſay much againſt the ſecond Article in the Declaration of the Convention againſt the King's Proceedings, *viz.* " His
" committing and proſecuting divers worthy Prelates, for humbly petition-
" ing to be excuſed from concurring to the ſaid aſſumed Power." For if by the Opinion of all, or moſt part of the then Judges, the King's Power of diſpenſing with this Statute of King *Charles* II. was good, it was certainly much more lawful in diſpenſing with all other Statutes againſt Papiſts and Nonconformiſts, ſince they are no more than bare penal Statutes, without any Clauſes of *Non-obſtante*. And tho I grant that King *Charles*'s Declaration giving a Toleration to Papiſts and Diſſenters, by diſpenſing with all the Acts againſt Maſſes and Conventicles, were declared illegal by the Houſe of Commons in the year 1672. and that the King, to get a good Sum of Mony, did recal that Declaration; yet it was never declared by him to be illegal, only that it ſhould not be drawn into conſequence for the future: and you know an Addreſs or Declaration of the Houſe of Commons alone, was never looked upon as a Declaration of the whole Parliament. And the Opinion of the Judges hath ever been, that no Statute or Judgment of Parliament can bar the King of his lawful Prerogatives (of which this of diſpenſing with ſuch penal Laws is one) ſo that it was certainly very undutifully done of the Biſhops, not only to deny diſtributing his Majeſty's late Declaration for Liberty of Conſcience in their ſeveral Dioceſſes, but alſo to have the Confidence to give him a Petition, wherein they deſir'd him not to inſiſt upon the Diſtribution and Reading of it, becauſe it was againſt Law: tho admit it were, being no way contrary to the Law of God, they ought to have obeyed it, ſince their bare diſtributing of it had not rendered it the more lawful. So that it being a great Miſdemeanor in theſe Biſhops to deliver this Petition, their Commitment and Proſecution at Law for the ſame was alſo legal, and what the Privy Council told his Majeſty he might well juſtify: ſo that if the King was too ſevere in this matter, they were to bear the blame, and not he.

F. I cannot deny but you have given a juſt account of the main Arguments made uſe of by the late Lord Chief Juſtice *Herbert*, in defence of the King's diſpenſing Power, and of giving his own Opinion for it; but I think, notwithſtanding all that Gentleman has written in defence of it, the King's Declaration of Indulgence, and his Diſpenſation grounded thereupon, to be both

of

J. E. C. p. 33. L. 6. C. 14. of them void and contrary to Law: and for proof of this, I ſhall firſt give you the opinion both of Divines and Civilians, concerning this matter. As

Diſp. 1, 2. c. 2. firſt *Suarez*, in his Learned Book *de Legibus*, ſaith, "That he hath the "Power of Diſpenſing, *qui legem tulit, quia ab ejus voluntate & potentia pendat.*" But *Vaſques* another Learned *Spaniſh* Caſuiſt holds, that no Prince whatever hath a Power to diſpenſe with his Laws according to his Pleaſure, or becauſe that they are his Laws: nay, he alſo denies ſuch an unlawful Diſpenſation to be valid. But to come to thoſe of your own Faculty, *H. Grotius* ſays

De æquit. Ind. cap. 2. De Jure Nat. & Gentium. l. 1. c. 6. expreſly, *Diſpenſare, hoc eſt, lege ſolvere, is ſolus poteſt qui ferenda abrogandaque legis poteſtatem habet.* *Puffendorf* affirms, "That none can diſpenſe with a "Law, but ſuch as have the power of making it." And the very Reaſon of the thing ſufficiently ſhews it, for to diſpenſe is to take away the Obligation of the Law in reſpect of them to whom it was granted; and whoever takes it away, muſt have the power of laying it on, and there is no difference between the Diſpenſation of a Law, and the Abrogation of it: but a Diſpenſation is an Abrogation of it to particular Perſons, while others are under the Force of it; and an Abrogation is a general Diſpenſation, that being no more than a Relaxation of the whole Law, to thoſe Perſons who were bound by it before. Therefore if the King have not the whole Legiſlative Power of this Kingdom (as I think I have already proved he has not) he neither can have the ſole Power of diſpenſing with Laws.

But to anſwer your main Argument, that the conſtant Practice hath been otherwiſe for the ſpace of above 200 Years, and that confirm'd by the Judgment and Opinions of all the Judges, and moſt conſiderable Lawyers in *England* ever ſince that time: to anſwer this I ſay, it is neceſſary, that I give you a

O. E. J. pag. 66. & dein. Vid. *Mat. Par.* p. 810, 811. Ibid. p. 817, 818. Ibid. p. 854, 875. ſhort Hiſtory of the diſpenſing Power, and the Original of Diſpenſations, with *Non-obſtantes*, which are ſo far from being as old as your Conqueſt, that the firſt News we hear of them, is from *Mat. Paris*; who expreſly tells us, they were firſt introduc'd by the Pope, and were afterwards inſerted into the King's Patents and Protections, in imitation of them, by King *Henry* III. ſo they were never made uſe of by any of our Kings to elude Acts of Parliament, till after the Statute of *Mortmain*, which was made in the ſeventh of *Edward* I. Which firſt Attempt muſt needs be illegal, becauſe contrary to *Magna Charta*, Ch. 36. which is the firſt Law which prohibits Alienations in *Mortmain*; and was not only ſworn to when enacted, but is alſo confirmed by many after Acts of Parliament, and order'd to be obſerv'd in all points: inſomuch that when the Clergy petition'd King *Edward* I. for a Relaxation of this Statute of *Mortmain*, his anſwer was, that he could not do it, becauſe it was enacted *Communi Conſilio Magnatum ſuorum, & ſine eorum conſilio non erat revocandum.* And

Hen. Knighton, p. 2502. in Dec. Scrip. I grant that ſuch was the miſguided Devotion of thoſe Times, that ſuch *Non-obſtantes* were often obtained, as appears by the Patent and Charter-Rolls in the *Tower*, from the eighth of *Edward* I. downwards, abounding with ſpecial Licences to purchaſe and hold Lands, *&c. Statuto de terris & tenementis in manum mortuum non ponendis non obſtante.* And yet were not theſe Licences accounted legal, or the Clergy ſafe in purchaſing ſuch Lands, Rents, Advowſons, *&c.* by virtue of them, till it was enacted and ordained in Parliament in the eighth

Chap. 3. of *Edward* III. to this effect; "That if Prelates or other Religious People "have purchaſed Lands, and the ſame have put to *Mortmain*, and be impeach'd "upon the ſame before our Juſtices, and they ſhew our Charter of Licence, "and Proceſs thereupon, by an Inqueſt of *ad quod damnum*, or of our Grace, "or by Fine, they ſhall be freely left in peace, without being further im-"peach'd for the ſame Purchaſe, *&c.*" But *Non-obſtantes* with the Statute of *Mortmain* having been introduc'd, as aforeſaid, tho undeniably illegal at firſt, and gaining afterwards a Countenance from this Act of Parliament, have I ſuppoſe given occaſion to the diſpenſing with other Acts of Parliament alſo, tho at firſt they were very rare, and ſeldom occur in the old Books, but are more frequent in the new; and that our Judges and Courts of Juſtice have invented little Diſtinctions betwixt *Malum in ſe*, and *Malum prohibitum*, betwixt Laws made *pro bono publico*, and Laws of more private regard; betwixt Laws in which the King's Profit and Intereſt is concerned only, and Laws in which the Subjects have an Intereſt, and are intitled to an Action as the Party grieved: yet the Caſes that have hitherto come before them judicially, have

been

been Queſtions upon Diſpenſations granted to particular Perſons, to exempt them, *pro hic & nunc*, from incurring the Penalty of ſuch and ſuch a Law; but a Diſpenſation and Suſpenſion of ſo many Laws at a lump (as the late Declaration of Indulgence did take upon it to do) has been ſo far from receiving any countenance from Courts of Juſtice hitherto, that it has always been a fatal Objection againſt any particular Diſpenſation of it; it was ſuch as conſequently eluded and fruſtrated the whole Law, for that ſuch a Diſpenſation is in effect a Repeal of the Law it ſelf: And therefore in that great Caſe of *Thomas* and *Sorrel*, in the Lord *Vaughan*'s Reports, where Diſpenſations with penal Statutes are in ſome Caſes allowed; yet it was then agreed by all the Judges, that the King had no power to ſuſpend a Law for ever.

But to let you ſee how jealous the Parliament, and in particular the Houſe of Commons, have ever been of truſting the King with an unlimited power of diſpenſing with penal Statutes, with *Non-obſtantes*, appears alſo by ſeveral other Laws of great moment, and in particular from the Statutes of *Proviſors* and *Præmunire*; and I could ſhew you from divers Records of Parliament, in the Reigns of *Richard* II. *Henry* IV. and *Henry* V. that they never intruſted the Crown with an abſolute power of diſpenſing with thoſe Statutes but only for a time, as till the next Parliament or longer, as they thought fit. But ſince I have not now ſo much time to give you ſo many Precedents at length, I ſhall only tell you, that as to the main Inſtance you rely upon, *viz.* the King's diſpenſing with the Statute of Sheriffs, at firſt it was not taken for Law, as appears by ſeveral Acts of Parliament, as in the 28th of *Henry* VI. whereby thoſe Sheriffs that had held their Offices for more than a year are pardon'd: likewiſe in the Act of *Edward* IV. there is a like Statute pardoning thoſe Sheriffs, "who by reaſon of the late Troubles in the Realm, had held for "above a year;" yet nevertheleſs it confirms all former Acts concerning Sheriffs for the time to come. And this held as far as the 6th of *Henry* VIII. which is long after the Judgment you mention in the Exchequer-Chamber, of all the Juſtices in *England* to the contrary: for there was then an Act made, "which reciting all the former Statutes about Sheriffs as then in full force, it "enacts that the Sheriffs and Under-Sheriffs of the City of *Briſtol*, may con-"tinue to occupy their Offices, in like manner as the Under-Sheriffs, and o-"ther Sheriffs Officers in *London* do, without any Penalty or Forfeiture for "the ſame, the ſaid Acts or any other Acts to the contrary notwithſtanding." From all which Statutes I think it ſufficiently appears, that neither the Sheriffs of thoſe times, nor the City of *Briſtol*, nor the whole Parliament, when that Act was made, did believe the King had power to diſpenſe with the Act of the 25th of *Henry* VI. concerning Sheriffs; for if they had, certainly it had been much eaſier and cheaper for them to have obtained the King's Diſpenſation, than to have got an Act of Parliament for it.

M. I believe you may have cited theſe Statutes right enough, but yet I think they are not ſufficient proof againſt ſo ſolemn an Opinion, as that of all the Judges in the Exchequer-Chamber, 2d of *Henry* VII. And whatever the Parliament might have declared in the caſe of this or that particular Statute, I confeſs carries ſome Authority with it; yet ought it not to be countervaled by ſo ſolemn a Judgment as that of all the Judges and Lawyers of *England*, together with the King's conſtant Exerciſe of this Prerogative, not only ſince, but before that time, and that without any Queſtion or Diſpute with the Parliament about it; as in the Caſe I have already put of the Statute, that forbids any *Welſhman* being an Officer in *Wales*. To which I may add divers other Caſes of the like nature, ſuch as the Statute againſt a Judg's going the Circuit in his own County, as alſo thoſe Statutes that prohibit the King from granting Pardons to Perſons convict, nay condemned for Murder, with ſeveral other penal Statutes I could name: for tho the King's hands are tied up by particular Clauſes of *Non-obſtante*, yet has his Majeſty, and his Predeceſſors, at all times exerciſed their Prerogative of diſpenſing in all thoſe Caſes, notwithſtanding thoſe Acts of Parliament, with *Non-obſtantes* to the contrary. And tho I grant you have given me ſeveral Precedents of the Parliament's ſometimes reſtraining the King in this Exerciſe of the diſpenſing Power; yet they are all, or the greateſt part of them, before the beginning of *Henry* VII's Reign, when I grant the Law firſt began to be ſettled in this matter. And ſince the

Judgment of all the Judges in the Exchequer-Chamber is the only Rule of Law we can have in the Intervals of Parliament, and this Caſe of Diſpenſations being by them adjudged, and ever ſince ſettled and owned for Law, without the leaſt Diſpute, I can ſee no reaſon we have to queſtion it now.

But as for the Statute of the 6th of *Henry* VIII. which you urge as a Precedent to the contrary ſince the Reign of *Henry* VII. I think it will not reach the Point in queſtion: for the Act you now cited ſeems to me no more than a private Act for the Sheriffs of *Briſtol* alone, who being it ſeems afraid to rely upon the King's Diſpenſations, becauſe they thought them too chargeable to be taken out as often as they ſhould have need of them, did think it a great deal leſs Charge and Trouble to paſs an Act of Parliament to indemnify themſelves, which I grant put that matter beyond all diſpute. But ſince this Act of *Henry* VIII. I find no Conteſt between the Parliament and the King about his Power of diſpenſing with penal Laws, till the Reign of King *Charles* II. when I grant the Houſe of Commons did addreſs his Majeſty, that penal Statutes, in Matters Eccleſiaſtical, cannot be ſuſpended but by Act of Parliament; as alſo the laſt Addreſs of the Houſe of Commons in 1685. againſt the King's diſpenſing with the Officers of the Army, their holding Employments without taking the Oaths and Teſt according to the Act, whereby they were appointed. But theſe being only againſt the King's Power of diſpenſing with Laws Eccleſiaſtical, as concerning Liberty of Conſcience, can no ways be extended to their excepting againſt the King's Power of diſpenſing with divers other penal Laws (I will not ſay all) which have *Non-obſtantes* in them.

F. Since I ſee not only your Opinion, but alſo that of moſt of the Judges and Lawyers of *England*, concerning this matter of the King's Diſpenſations with penal Laws, has been chiefly (if not only) founded upon that Opinion of all the Judges in King *Henry* VII's time, give me leave to examine the validity of that Judgment; for if that can be proved not to have been according to Law, or elſe never given at all, I ſuppoſe you muſt grant that my Lord *Coke*, and all others who have founded their Opinion upon this adjudged Cauſe of *Henry* VII. were miſtaken.

J. E. C. *p.* 43. Now pray give me leave to argue a little with you in point of Reaſon: If a *Non-obſtante* from the King be good, when by Act of Parliament a *Non-obſtante* is declared void, what doth an Act of Parliament ſignify in ſuch a Caſe? Muſt we ſay it is a void Clauſe? But then to what purpoſe was it put in? Did the Lords and Commons, who drew this Act of the 23d of *Henry* VI. as alſo thoſe Acts concerning Sheriffs, underſtand this Clauſe of *Non-obſtante* to be void when they put it in? If it were ſo, and contrary to the King's Prerogative, why did the King paſs this Act without any Refuſal or Proteſtation againſt it? Certainly it was then thought otherwiſe, and if ſo, we have the Authority of the two Houſes of Parliament againſt the Opinion of the Judges. But if it were not a void Clauſe then, how came it to be ſo afterwards? Pray ſay what Alteration has been made in the Laws of *England* by Act of Parliament as to this Point, ſince the time that theſe Acts have been made; for if not, how comes a Clauſe that had force in 23 *Henry* VI. to have none in 2 *Henry* VII? Could the twelve Judges in the Exchequer-Chamber, by giving their Opinions, deſtroy the force of an Act of Parliament?

M. I do not ſay they can, only I affirm with my Lord *Coke*, and all the Judges, "That no Act can bind the King from any Prerogative which is inſe-"parable from his Royal Perſon, but he may diſpenſe with it by a new *Obſtan-"te*, as a Sovereign Power to command any of his Subjects to ſerve him for "the publick Weal." Nor can this Royal Power be reſtrain'd by any Act of Parliament: And upon this ground it is that my Lord *Coke*, in the 12th Report (from whence I have taken this Concluſion) maintains, that ſuch Diſpenſations made by Sheriffs are good; and upon the ſame ground the Diſpenſation lately granted by the King to Sir *Edward Hales*, and all other Popiſh Officers and Miniſters, as well Civil as Military, muſt be alſo good.

F. But admit I ſhew you that there was never any ſuch Judgment in the Exchequer-Chamber, in the 2d of *Henry* VII. as my Lord *Coke* and late Lord Chief Juſtice *Herbert* ſuppoſe; will it not then follow, that all their Arguments, that are wholly founded upon this Statute, will fall to the ground?

M. Yes,

M. Yes, indeed, that will be ſomething; but how will you prove that? Can you believe ſo many learned Judges ſhould be miſtaken in this matter, and thoſe of your Opinion only ſhould make this Diſcovery?

F. I do not deſire you ſhould believe me, but your own Eyes, and therefore look upon the Year-Book it ſelf. Here you ſee that it is indeed ſo far true, that all the Juſtices were of Opinion, that the Grant of the Sheriffdom of the County of *Northumberland*, to the Earl of that County for Life, was good, but do not tell us all the Reaſons whereon their Judgment was grounded; tho it ſeems to have been becauſe the Sheriffdom of that County had been commonly granted for Life, before this Statute of *Henry* VI. was made, as appears by theſe words in the Year-Book: *For it* (*viz.* a Sheriffdom) *is ſuch a thing as may be well granted for Term of Life, or Inheritance, as divers Counties have Sheriffs by Inheritance, which began by the King's Grant.* Then was ſhewn a Reſumption (*I ſuppoſe it meant an Act of Reſumption of the Sheriffalty*) as appears by the following words; and then was ſhewn a *Proviſo* for it, *Count. de N.* and if ſo, the King had a Right to grant it only for Life again. But none ſave *Radcliff* (one of the Barons of the Exchequer) cites the Statutes of the 28th and 42d of *Edward* III. againſt Sheriffs holding for above a year; but he doth not cite this Statute of the 23d of *Henry* VI. at all. Nor doth he, or any other of the Judges, nor the Court, ground their Opinion upon any *Non-obſtantes* expreſſed in the ſaid Acts; for if you pleaſe to conſult them, you will find there is no Clauſe of *Non-obſtante* in any of them, before the 23d of *Henry* VI. which is not at all mentioned here: therefore I wonder how *Fitz-Herbert*, in his Abridgment, comes to vary ſo far from the Year-Book, from whence he muſt have took it, as to make the Judgment to have been grounded upon the *Non-obſtante* in that Statute of *Henry* VI. for none but *Radcliff* ſpeaks any thing of the Patent's being good with a *Non-obſtante* to thoſe Statutes; and the Court in all the reſt of the Caſe, agree the Patent to be good, by reaſon of the ſaid *Proviſo* in an Act of Reſumption, and then fall into Debates concerning the other Point, how this Patent was to be underſtood.

Vid. 2. *H.* VII. *Ter. M. Caſt.* 20. fol. 66.

M. I muſt confeſs if this be ſo, as it ſeems to be *prima facie*, I wonder my Lord *Coke*, and other learned Lawyers, have laid ſo great a ſtreſs upon, and drawn ſo many Arguments from this Judgment of the Judges; tho I muſt needs alſo tell you, that tho only *Radcliff* inſiſts upon the *Non-obſtante*, yet ſince the reſt of the Judges did not contradict him, it ſeems to me that they all concurred with him; ſince, according to the Proverb, *Silence often gives Conſent.*

But this much I ſuppoſe you cannot deny, that ever ſince *Henry* VIIIth's time at leaſt, Sheriffs have been frequently continued for above a year, and the Judges have been alſo diſpenſed with to go to the Circuit in their own County; and *Welſhmen* have been commonly made Judges and other Officers in *Wales*, by virtue of the King's Diſpenſations, notwithſtanding the particular Clauſes of *Non-obſtante*, in the Statutes of *Richard* II. *Henry* IV. and *Henry* VI. by which they are expreſly prohibited.

F. I do not deny what you have now ſaid as to matter of Fact, only let me tell you, I conceive that the Reaſon why the King has taken upon him to diſpenſe with thoſe Statutes you mention, was, becauſe the Cauſes for which they were firſt made, have long ſince ceaſed. For when thoſe Statutes againſt Judges going the Circuit in their own Counties, and Sheriffs holding for above a year were made, both the Judges and Sheriffs were found (the one by going their Circuits in their own Counties, where they had great Intereſt and Acquaintance) to have too much awed the common Juries; and the other (by their great Eſtates and Commands in the Country) to have made partial Returns of Juries, and alſo by their long Continuance in their Office, to have learnt a Trade of oppreſſing the People. So when by the ſtop that was put to thoſe Abuſes by theſe Statutes (you have mentioned) there was no need of a ſtrict Obſervation of theſe Laws; and alſo when after the Civil Wars between *York* and *Lancaſter*, and all things became ſettled under King *Henry* VII. (who was of a *Welſh* Family) there was then no more need of obſerving the Statute of *Henry* IV. againſt *Welſhmens* bearing Offices; eſpecially after the Statute of the 27th of *Henry* VIII. when *Wales* became incorporated with *England*, and had by that Statute a Right conferred upon it, of ſending Members

to Parliament, tho the Parliament might not think fit, or at leaſt forgot to repeal them: and yet finding that the Kingdom receiv'd no Prejudice, but rather Benefit by ſuch Diſpenſations; and not caring to quarrel with their Kings, for ſometimes uſing a Prerogative by which they were rather benefited, than grieved; thoſe Diſpenſations have ever ſince paſſed, without any complaint in Parliament: which would certainly have been before this time, had they found the ſame Grievances and Reaſons to have ſtill continued for the ſtrict obſervance of thoſe Laws, as there were at firſt for the making of them. Tho if they will have my private Opinion, I think it had been much better, for avoiding all Diſputes between the King and Parliament, as alſo for preventing the evil uſe that has been made of thoſe Precedents, to advance the King's Prerogative to what height he pleaſed; rather to have repeal'd all thoſe obſolete Statutes, than to have ſuffer'd them ſtill to continue.

But to let you ſee that the diſtinction of *mala in ſe*, and *mala prohibita*, often fails, I think I can prove it to you by divers undeniable Inſtances: for there are divers things which are not *mala in ſe*; that is, neither Natural nor Moral Evils, either by Common or Statute Law; and yet being declar'd common Nuſances, are only *mala politica & introducta*, which the King cannot diſpenſe with at all, only becauſe they are prohibited. Thus the King cannot diſpenſe with the leaſt Nuſance to the High-ways, as by laying Dung in them, or the like; tho Men may very well paſs through them for all that. So likewiſe by the Statute of the 18th of King *Charles* II. the bringing over of *Iriſh* Cattel, is declar'd a publick Nuſance, and therefore the King cannot diſpenſe with it; yet no Man will ſay it was ſo before that Statute was made: and therefore it was well obſerv'd by the late Chief Juſtice *Vaughan*, in that Caſe of *Thomas* and *Sorrel* I now mention'd, that publick Nuſances are not *mala in ſe*, but *mala politica & introducta*. And when a thing is ſaid to be prohibited by the Common-Law, the meaning is no more, but that the antient Record of ſuch a Prohibition is not to be found.

Vaughan's Rep. f. 358.

M. I grant indeed the Author you have now cited in that Caſe, very well reſtrains the King's Prerogative, as to things that concern the Right or Property of others; and therefore the King cannot pardon the Damage done to particular Perſons, where the Suit is only the King's: but for the Benefit and Safety of a third Perſon, if he diſpenſes with the Suit, it muſt be by the conſent and agreement of the Party concern'd. And again, penal Laws, the Breach whereof is to any Man's particular Damage, cannot be diſpenſed with; and the Chief Juſtice *Herbert* himſelf owns, that the King cannot diſpenſe with Laws which veſt the leaſt Right of Property in any of his Subjects.

F. 333, 334.

F. 29.

F. Very well then, we ſee the Prerogative is bounded where the Intereſt of particular Perſons is concern'd: But doth the Law take more care of them, than of the publick Intereſt, and the Concernment of the whole Nation? And this Act againſt Papiſts holding Employments was certainly made *pro bono publico*, to prevent the danger that may happen from Popiſh Recuſants, who were before prohibited by divers Statutes to hold any Offices or Employments, before they had taken the Oaths of Supremacy and Allegiance. Therefore I cannot ſee how ſuch a Diſpenſation can be good, the Breach whereof muſt tend ſo much to the danger of the Commonwealth; if, according to the Rule you have laid down but now, no Law can be diſpenſed withal, that is for the Benefit and Safety of a third Perſon, or where the Breach thereof is to other Men's particular Damage. Now certainly whatſoever is prejudicial to the publick ſafety of the Commonwealth, muſt be alſo prejudicial to the ſafety of every private Perſon, and the Breach thereof does tend to each Man's particular Damage in the Nation, if they are once generally diſpenſed with.

M. I grant this is the moſt natural Objection you have made, againſt the King's Power of diſpenſing in this Caſe: but my Lord Chief Juſtice *Vaughan* in the Caſe already cited, anſwers this Objection very well: No offence, ſays he, againſt a penal Law could be diſpenſed with, if the reaſon of not diſpenſing were becauſe the Offence is *contra bonum publicum*; for all Offences againſt penal Laws are ſuch: and tho ſuch Laws are *pro bono publico*, they are not Laws *pro bono ſingulorum populi* (which are the Laws which the King cannot diſpenſe with) but *pro bono populi complicati*, as the King in his diſcretion ſhall think fit to order them for the good of the whole. In this Nation the Eſtate of every

P. 341, 342.

every *Pater-familias* may be ſaid to be *pro bono communi* of his Family, which yet is only at his diſcretion and management; and they have no Property in it, tho they have Benefit by it. And therefore it is but reaſonable, that as to the *bonum publicum ſingulorum* the King ſhould not diſpenſe, becauſe every Man hath a particular Intereſt in it, and they are Judges of it themſelves: whereas in thoſe Acts that are *pro bono populi complicati*, as theſe Acts of Sheriffs, and for taking the Oaths and Teſt are, the King is the ſole Judg in what Caſes they concern the publick good of the Commonwealth, and where they do not.

F. I confeſs this is a ſubtle piece of Learning; but pray let us take it a little out of theſe *Latin* Terms, and then the meaning of it is no more than this, That the King can do nothing to the prejudice of the People in their private Capacities, but he can do what he will with the Publick. I thought indeed a Prince had been in the firſt place bound to regard the Good of the Publick, and to take care of the *ſalus populi complicati* (as you call it) that is, as they are imbodied together, above the private Good or Intereſt of particular Men, which you call *bonum ſingulorum populi*; which can never be preſerved, but where the Laws and Statutes ordain'd for the publick benefit and ſecurity of the Commonwealth have been generally broken and violated by common and eaſy Diſpenſations, and have been abuſed to that degree, that we lately ſaw a Popiſh Lawyer, who was thought any thing fit to be a Judge, might ſit upon the Bench, upon the Lives and Eſtates of Proteſtants; every Deputy Lieutenant, Juſtice of Peace, or other Officer, either Civil or Military, might be ſure of being prefer'd, if he either was a Papiſt or Fanatick; every Miniſter or Parſon of a Pariſh, who would renounce the Orders of the Church of *England*, might hold his Living without doing any of the Spiritual Functions; and all this by virtue of theſe Diſpenſations, grounded upon the diſtinction of the publick Good of the whole People taken together, as different from that of the publick Good of each particular Perſon. *J. E. C.* p. 41.

But it ſeems ſtrange to me that our Anceſtors ſhould take ſuch care of the Laws concerning the Meaſures of Bread, Drink and Fleſh, as that the King cannot diſpenſe with them, becauſe they reſpect the common Good of the whole People, and of every particular Perſon; but as to the Laws which concern the publick Good of the whole Nation in general, they were content to leave them to the ſole Will and Pleaſure of their Prince. No one that reads the Hiſtory of our Anceſtors, and the Conteſt they had with their Kings to obtain theſe publick Liberties, could ever entertain ſuch a thought concerning them. But that the Laws concerning the Oaths and Teſt, are not only for the publick Good of the Commonwealth, and that the King is not the ſole Judge when they may be diſpenſed with, appears plainly by this, that the Law for taking the Oaths and Teſt, has given every particular Perſon a Right to proſecute any one that hath acted contrary to it, and the Penalty of 500 *l.* is given wholly to the Proſecutor: which ſhews plainly, that the Intent of the Law was to make it every Man's particular care as well as benefit to ſee it obſerved; and conſequently ſince every particular Perſon has an Intereſt in it, it cannot be diſpenſed with by the King. *J. E. C.* p. 42.

M. Since it grows late, I ſhall not further diſpute this Point with you, of the King's Diſpenſing Power, tho I had a great deal more to urge in defence of it; for notwithſtanding all you have ſaid againſt it, it is now counted ſo inherent a Prerogative, and in many caſes ſo neceſſary for the Benefit of the Subjects, that the Convention it ſelf, after a great deal of diſpute about it, tho they had condemn'd the King for aſſuming and exerciſing a Power of diſpenſing with, and ſuſpending of Laws without conſent of Parliament; yet in this very Declaration, when they aſſert their antient Rights and Liberties, they only declare, "That the pretended Power of diſpenſing with Laws, or the Execu-"tion of Laws, by Regal Authority, *as it hath been aſſumed and exerciſed of* "*late*, is illegal:" which ſhews that they do not go ſo high as you, who ſeem to be abſolutely againſt any ſuch thing.

F. You very much miſtake me if you ſay ſo: for tho I maintain that antiently, till about the middle of the Reign of King *Henry* the Third, there were no Diſpenſations at all, either becauſe they were not thought neceſſary, or elſe that Penal Laws were not then multiplied to that degree they have been ſince; yet ſeeing they have been now ſo long in uſe, and do (I grant) often

often tend not only to the Benefit of the King, but alſo of the Subject, I do no ways condemn them, provided they are reſtrain'd within thoſe due Limits preſcribed by the late Chief Juſtice *Vaughan* in the caſe above-mention'd; and that they do not tend to the common Miſchief and Ruin of the Proteſtant Religion eſtabliſh'd by Law, and the Rights and Liberties of the Subject. Nay, I grant in times of neceſſity, as in the coming over of the Duke of *Monmouth* (for example) the King might perhaps juſtify the granting Commiſſions to Popiſh Officers, and therefore the Parliament did very well to offer the King to prepare an Act to indemnify them from the Penalties they had incurred by acting without taking the Teſt: So that when the King utterly refuſed this reaſonable Propoſition, and choſe to diſſolve the Parliament, rather than he would permit them in the leaſt to queſtion this uſurped Power, what could be farther expected, than that he was reſolved to execute that, as well as all other Diſpenſations, whether the Parliament would or not, as we afterwards found he did?

But admitting he really had been endued with this Prerogative, yet was it ſtill under a Truſt not to abuſe it ſo notoriouſly as he did, by granting it to every Apoſtate Perſon, Officer, or Judge, that required it; and I doubt not but if he had govern'd a little longer, we might have found it granted to Biſhops likewiſe, as ſoon as he had thought fit to make them of his own Religion: for tho the King (for example) has an undoubted Prerogative of pardoning Robbers and Highway-men, yet if he ſhould ſo far abuſe his Prerogative as to pardon every Robber that was taken, I leave it to you to conſider, whether ſuch a Government could long ſubſiſt. I ſhall not apply this Caſe to theſe Diſpenſations, becauſe they ſay Compariſons are odious.

Theſe things being apparent, I think it would be very eaſy to vindicate that Clauſe in the Declaration concerning the Biſhops, if the King's Declaration was unlawful (as certainly it was) not only by reaſon of the Diſpenſing Power (we have been now diſputing about) but alſo for one main Clauſe in it, which I have yet but lightly touched; which is this: "We do likewiſe declare, it is our Royal Will and Pleaſure, that from henceforth the "Execution of all, and all manner of Penal Laws in matters Eccleſiaſtical, "for not coming to Church, or not receiving the Sacrament, or for any other "Non-conformity to the Religion eſtabliſh'd, or for, or by reaſon of the Exerciſe of Religion, in any manner whatſoever, be immediately ſuſpended, and "the farther Execution of the ſaid Penal Laws, and every of them is hereby "ſuſpended." So that by this Clauſe in the Declaration, not only the Laws of our Reformation, but all the Laws for the Preſervation of the Chriſtian Religion in general were ſuſpended, and become of no force; ſince every Man might not only chuſe whether he would come to Church or not, but alſo all Prieſts and Miniſters were hereby indemnify'd from either praying or preaching in the Churches, as well as their Pariſhioners freed from hearing them: So that not only all the Laws of our Reformation were at once ſuſpended, but thoſe of Chriſtianity it ſelf by theſe words, (*or for, or by reaſon of the Exerciſe of Religion in any manner whatſoever*) nor is it confined to the Chriſtian Religion, but all other Religions (even *Mahometaniſm* it ſelf) were thereby permitted.

But perhaps it may be urged, that the Execution of the Law is only hereby ſuſpended, and not the Law it ſelf. But this is a mere Evaſion; for what is the external Obligation of any Law, but its Execution in order to Obedience? which if it be once taken off, there can only then remain the naked internal Obligation *in foro conſcientiæ*; and with how few this is of any weight, you underſtand ſo well, I need not tell you.

So that by this Declaration the King took upon him to ſuſpend above forty Statutes at once concerning our Religion; and if he could do ſo, I deſire to know whether he might not the next Week have ſuſpended forty more, even concerning our Civil Properties likewiſe; and ſo might have proceeded till he had ſuſpended all the Laws in the Statute Book. Nor are thoſe Laws ſuſpended for any limited time, but during the King's Pleaſure; and this not only a bare ſuſpenſion for a time, but in effect a downright Abrogation of them: For what is an Abrogation of a Law, but the taking away the Force of theſe Statutes, without any time limited? And if this be not to uſurp the ſole Legiſlative

Power,

Power, I know not what is; and if this were once commonly put in practice in effect in all Cases, Acts of Parliament would signify nothing, and the Legislature would be wholly in the King: this was so evident, that it was granted by one of the Judges at the Trial of these Bishops. *Mr. Justice Powel.*

This being the Truth of the Case, I cannot see wherein the Bishops that presented this Petition to his Majesty acted at all undutifully towards him, as you suppose; for being by the King's Order in Council commanded to distribute this Declaration to their inferior Clergy, which they knew in it self to be unlawful, their Distribution of it would not only have been looked upon as the owning of an unlawful thing, but would also have drawn the inferiour Clergy into the same Snare; who if it were unlawful, ought not to have publish'd to their Parishioners a Licence to act directly contrary to Law: and therefore the Bishops were not only under the Obligation of that dreadful Charge and Imprecation, express'd in the Statute of Uniformity, in the first Chap. 2. of Queen *Elizabeth*, if they did not endeavour the utmost execution thereof through all their Dioceses and Charges; but being also pressed upon to distribute it contrary to their Consciences, what could they do less in order to excuse themselves from this unlawful Command, than privately to tell the King the reason of their Disobedience; and also humbly to petition him not farther to insist upon it, either in respect of themselves or their inferiour Clergy? And you know that it was allow'd by your Civil Law for any Judge, or *Prætor, rescribere Principi*, if he were by him commanded to act contrary to any former Law or Edict of the Emperor.

M. I will not deny that, but yet methinks the Bishops in this case would have acted more respectfully and discreetly, if they had forbore petitioning; and though they had refused to obey the King's Declaration, yet needed they not to have declared against it till the Parliament met, when I grant they might freely and safely have done it: or else if they would have petition'd at all, it should have been in more dutiful and respectful Terms, than by telling the King that his Declaration was illegal, and that they could not in Prudence, Honour or Conscience, so far make themselves Parties to it, as to distribute it: and it was this alone which was looked upon as seditious, and for which his Majesty thought fit to have them indicted in the King's Bench, as a matter of high Misdemeanour.

F. I confess you have said in short the Sum of what was urged against them by the King's Council at their Tryal, but all this was very well answer'd by one of the Judges themselves; first, That it would have been too late to have stayed for a Parliament, because the Declaration was to have been distributed by such a time; neither could they have acquiesc'd under it and submitted, for that would have been to run into a contempt of the King's Command, unless they had also shewn the Reasons why they could not obey him: and since this could be done no other way than by Address or Petition, what other Reasons could they give, but that they thought it had been more than once declared illegal in Parliament; and therefore *that they could not in Prudence, Honour and Conscience obey it?* Not in Prudence, because they were liable to answer it in Parliament; not in Honour, because it is unworthy the Character of Bishops and Lords of Parliament to act any thing that may make them look like Flatterers or Time-servers; not in Conscience, because of the Imprecation they lay under by the Act of Queen *Elizabeth*; as also because no Man can with a safe Conscience give his Approbation to that which is contrary to Law.

And therefore I must needs tell you, that it was very severely and unjustly done in the King to give up this Petition (which was deliver'd him with all the Privacy imaginable) to the Privy Council, in order to have the Bishops prosecuted for it; but which made a great deal more noise and heart-burning against his Government, to commit them Prisoners to the Tower, and then to bring them to their Tryal, and prosecute them with the utmost Rigour; where though they escaped Punishment, yet was it no thanks to the Prosecutors, but to the Directions of the Judges, two of whom (for their Honour) differ'd from the late Lord Chief Justice and his Popish Companion; as also to the Honesty of the Jury, who found them not guilty.

M. I cannot deny but you have given a pretty fair account of this matter, and I cannot but own, that it was one of the worst-advis'd things that happen'd under

under the King's Government; but I cannot impute this to his Majesty's innate Disposition, which was wont to act with greater Temper and Moderation towards those who differ'd from him in Judgment, and therefore must impute it wholly to the wicked Instigations of Father *Peters*, and the other Popish Ministers.

But as for divers other Articles mention'd in the Convention's Declaration; "Such as the issuing out, and causing to be executed a Commission under the "Great Seal, for erecting a Court, call'd *The Court of Commission* for Ecclesiasti-"cal Affairs, and levying Mony for, and to the use of the Crown, by pretence "of Prerogative, for other time, and in other manner than the same was gran-"ted by Parliament:" with all the rest of the Articles in that Declaration relating to Civil Affairs; since they are to be looked upon as the sole Acts of the Judges, and not of the King, they, and not he, ought to suffer for the Illegality of them; since, as you your self have own'd, the King in his judicial Capacity can do no wrong, that Power being wholly committed to his Judges: and therefore it was very hardly, nay unjustly done, to lay this to his charge, which he is not to answer for; so that if any thing has been done amiss in this kind, they are to answer for it, and not to run such things up to a Forfeiture or an Abdication, as your Convention have done.

F. I need not say much more to this Objection, because I have in great part answer'd it already, and prov'd that most of the things found fault withal, were the King's own Acts, as well as those of his Ministers and Judges; for as to the Commission for Ecclesiastical Affairs, which is directly contrary to the Statute of King *Charles* I. which took away the Court of High Commission, as also to a Clause inserted in the Act of the 13th of *Charles* II. "wherein the "Act for taking away that Court is not only confirm'd, but also the erecting "any other like Court by Commission is expresly forbid:" This being the case, the fault of the issuing out of this Commission cannot be laid upon the Judges; who though some of them acted in it, yet was it never formally brought before them to determine whether it was illegal or not: and no Man can imagine, that unless the King had a passionate Desire for this Power, that he might thereby be able to suspend, deprive, and turn out whom he pleased of the Bishops and inferiour Clergy, with the Heads and Fellows of Colleges, whom he should find the most irreconcileable Enemies to his Religion, or obstinate in refusing to obey his illegal Commands, as too plainly appear'd by the Suspension of the Bishop of *London*, the turning out of the President and Fellows of *Magdalen*-College, and that Prosecution that was lately order'd against all those Bishops and inferiour Clergy who had refused to distribute or read the King's Declaration; though I confess there was a stop put to this, upon recalling this Commission, immediately before the Prince's Arrival.

Chap. 11. Chap. 12.

So likewise for the other Article, of levying Mony contrary to Law, that was done also without any Opinion of the Judges at all demanded about it; for the illegal Collection of Chimney-Mony, by making Cottages and Ovens pay, that were expresly exempted by the Acts concerning it; and also the illegal levying of Excise, by making Small-Beer pay the Duties of Strong; were all of them acted and done by particular Directions from the Treasury, or by the private Abuse of the Farmers of the Excise, without any Opinion of the Judges: and of these Orders his Majesty could not chuse but be the Author, or Approver at least, since 'tis very well known he constantly sate there when any great Business was to be transacted; and the Lord Treasurer, or Commissioners of the Treasury, would certainly never have presumed to have issued out their Orders in a Case of so great moment, if they had not been very well satisfied that it was his Majesty's express Will and Pleasure to have it so.

And I my self have now by me a Copy of the Earl of *R*, then Lord Treasurer, his Directions to the Officers appointed for the levying of Chimney-Mony, commanding them to levy it upon all Cottages and Ovens whatsoever, which was done accordingly with the utmost Rigour: which though it was a very great Oppression, yet it chiefly concerned the poor and ordinary sort of People, who had not Purses to go to law with the King; or else such Gentlemen and others, who though they were forced to pay for their poor Tenants, yet did they not think it worth their while to bring it before the Barons of the Exchequer, where, as things then went, they could not expect to find any redress.

I ſhall not inſiſt upon the King's taking the additional Cuſtoms contrary to the Act of Parliament, by which they were granted to the late King *Charles* only for Life: and though in his laſt Sickneſs there was a Contract for the new farming of them, by virtue of which, I grant the King might have juſtified the taking of them till the end of the Farm; yet ſince that Contract never paſſed the Seals during the King's life-time, it was certainly againſt Law for the King to take them before they were re-granted by Act of Parliament: I ſay, I ſhall not inſiſt upon this, ſince the Parliament were ſo eaſy as to paſs it by without declaring it to have been illegal; only it ſufficiently ſhows, that from the very beginning of the King's Reign, he was reſolv'd to govern arbitrarily, and to levy Mony upon the Subject, whether the Law gave him any Authority to do it or not.

But as to what you ſay concerning the Judges being wholly in fault, for all the unjuſt and illegal Proceedings exerciſed in their Courts, and that the King was wholly faultleſs; I ſhould be of your mind, had I not ſeen that all thoſe Judges who would not agree to the diſpenſing Power (and other illegal Judgments I could name) were turned out, and others, either Papiſts, or of leſs Conſciences than Papiſts, were put in their places, which were not confer'd for any longer time, than *durante beneplacito:* and therefore no wonder if ſuch Men were abſolute Slaves to the King's Will and Pleaſure.

M. I had much more to ſay in defence of the King's raiſing and keeping up a ſtanding Army, and his diſarming Proteſtants in, and after the Duke of *Monmouth*'s Rebellion, which are laid to his charge, as Endeavours to deſtroy the Rights and Liberties of the Kingdom.

But ſince it grows late, I ſhall only now take notice of ſomething which I forgot to inſiſt upon, concerning your Notion of the King's abdicating the Crown by a wilful Breach of the Laws, which is quite different from the Senſe in which this Word is taken in *Roman* Authors, as alſo in our Civil Laws; for when *Cicero* uſes the Expreſſion, *Itaque tutela me abdicare cogito*, *Briſon* tells us his meaning was, *ſe nolle eſſe tutorem.* But *Pomponius*, in his Book *de Orig. Juris*, L. §. 13. gives us the true ſenſe of this Phraſe; *Abdicare ſe Magiſtratu, eſt ante tempus Magiſtratum deponere:* which plainly ſhows the *Romans* had no notion of a tacit or imply'd Abdication of a Charge or Magiſtracy without a Man's expreſs Conſent. And therefore if the King's bare Deſertion of the Kingdom was not an Abdication of the Throne (as you your ſelf are forced to grant) I cannot imagine how the King's Violation of the Laws, or endeavouring to ſubvert the Government (both which you lay to his charge) can properly be call'd an Abdication of it. So that indeed the King hath not abdicated the Government, but your Convention hath abdicated him: and tho we often read in our Civil Law, That a Father may *abdicare filium*; yet I never read, or can you ſhow me any Example, that a Son might abdicate a Father, or Subjects their Prince.

F. You diſcourſe upon a wrong ground; for I never affirm'd, That Subjects had any Authority to abdicate or depoſe their Prince; nor hath the Convention aſſum'd any ſuch Power to themſelves: what they have done in this Affair hath not been authoritative, or as taking upon them to call the King to an account for his Actions, or to depoſe him for his Miſgovernment; but only declarative, to pronounce and declare as the Repreſentatives of the whole Nation, that by his endeavouring to extirpate the Proteſtant Religion, and to ſubvert the Fundamental Laws and Liberties of the Kingdom, he had wilfully (I do not ſay willingly) abdicated the Government, that is, renounced to govern this Kingdom any longer as a lawful King; which I take to be a tacit or imply'd Abdication of it, as I have already proved. And I can ſhew you farther, that even *Tully* himſelf allows our ſenſe of an imply'd Abdication, in his third *Philippick*, when he ſays thus concerning *Mark Antony*, that by his offering a Crown to *Cæſar*, *Eo die non modo conſulatu, ſed etiam libertate ſe abdicavit*, &c. where you ſee *Mark Antony* is ſaid to have abdicated the Conſulſhip without any expreſs Renunciation of it; for *Cæſar* might have continued him in it after he had been declar'd Dictator.

M. I grant your Authority to be good, yet even in this ſenſe this Abdication of the Conſulſhip could only take its effect from *Anthony*'s own Will; for offering a Crown to *Cæſar*, if he did not expreſly, yet he effectually renounced his Conſulſhip: for had *Cæſar* accepted it, he could no longer have been the Conſul

of a Popular State, but muſt thenceforth have acted by Authority from *Cæſar*, or not at all: But then this would not have agreed with your Notion of a Forfeiture, which always ſuppoſes a Crime, and a depriving the Party offending from his Office or Dignity, whether he will or not. So that if the Convention have adjudged the King to have abdicated, they muſt ſuppoſe it to have been by his own Conſent, or not at all; but if they ſuppoſed him to have forfeited, why did they not downright declare ſo, as well as the *Scotch* Convention had done? and then I could have told the better what to have ſaid to them, and have proved that only Subjects, and not Kings, are liable to Forfeiture.

F. I will not deny, but that the word *forfeited* had been more proper than *abdicated* in this Vote of the Convention; but yet I think I have ſufficiently proved, that there is no great difference between a Man's abdicating an Eſtate by a wilful diſpoſing of it otherwiſe than the Law requires, and a Forfeiture of it: for as I ſhew'd you, a Tenant for Life aliening in fee, doth not only forfeit his Eſtate to him in reverſion, but is alſo an Abdication of it, though perhaps he had reſerved to himſelf a Leaſe of the Eſtate for Years: and this is called a Forfeiture of the Eſtate, though he committed no other Crime, than the wrong done to him in reverſion; and therefore (as I ſaid before) this Forfeiture doth not always ſuppoſe any Crime for which the Party may be puniſh'd, otherwiſe than by the loſs of the Eſtate; nor yet doth it ſuppoſe any ſuperiour Power in the Party that takes it.

But your Exception againſt my Authority from *Tully*, of *Mark Anthony*'s imply'd Abdication of the Conſulſhip without any expreſs Renunciation of it, is very frivolous; for you your ſelf own, that *Anthony* did not expreſly, but only in effect renounce the Conſulſhip, when he offered *Cæſar* the Crown: and if he did not do it expreſly, then it ſeems *Anthony* could renounce the Conſulſhip without ever intending it, by doing an Act that in effect abrogated his own Power; and why King *James* might not do ſo too with his Crown, I deſire you would ſhew me any ſufficient reaſon. But that the Convention did alſo look upon this Abdication of King *James* as a Forfeiture, appears plainly by their declaring the Throne vacant, without troubling themſelves to find out who was the next Heir to be placed therein.

But to conclude: There might be a very good reaſon why the Convention did not think fit to make uſe of the word *Forfeiture*, as the Parliament of *Scotland* have done in the like caſe; for ſome of the moſt wary and prudent Members of the Houſe of Commons, conſidering that this word *Forfeiture* might prove of very hard digeſtion to a great part of the Houſe, and alſo might give great offence to divers of the Biſhops and Lords in the Houſe of Peers, they found out this new word *abdicated*, as an Expedient to ſolve that Difficulty, and which might not only expreſs the King's wilful Deſertion of the Government by his firſt Departure, but alſo his Renunciation of it, upon thoſe legal Conditions he was to hold it; ſince, as I have already obſerv'd, the word *abdicated* in their Vote refers not only to his having withdrawn himſelf out of the Kingdom, but to all the reſt of the Clauſes foregoing, or elſe they would ſignify nothing in that place, both the Abdication and the Vacancy of the Throne being grounded upon all of them alike. I ſhould now proceed to your laſt Exception againſt this Vote of the Convention, *viz. That the Throne is thereby vacant*; but I ſee it is now very late, and therefore it is beſt to defer the farther diſcuſſing of that matter till another opportunity, which I deſire I may have as ſoon as you pleaſe.

M. Yea, and then we will alſo conſider that part of the Convention's Declaration, whereby they reſolve that the Prince and Princeſs of *Orange* be declar'd King and Queen of *England*, &c. which if you can prove to me to be according to the Laws of *England*, I will then acknowledge them to be lawful King and Queen of *England*; but till I am convinced of it, I muſt beg their pardons.

F. Well, I will wait on you again two or three days hence, and then I hope I ſhall make out thoſe Points as well or better than any I have done hitherto; and in the mean time I am your humble Servant.

M. I pray do it better if you can, or elſe you will not very much edify me; but however I wiſh you good-night.

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DIALOGUE XII.

I. Whether the Vote of the late Convention, wherein they declared the Throne to be vacant, can be juſtified from the antient Conſtitution, and Cuſtoms of this Kingdom.

II. Whether the ſaid Convention, declaring King *William* and Queen *Mary* to be lawful and rightful King and Queen of *England*, may be juſtified by the ſaid Conſtitution.

III. Whether the Act paſſed in the ſaid Convention, after it became a Parliament, whereby Roman Catholick Princes are debarred from ſucceeding to the Crown, was according to Law.

M. I Am glad, Sir, you are come, for I was wiſhing for you; pray ſit down, and let us begin where we left off. You may remember you promiſed me, when we laſt parted, that the next time I ſaw you, you would make out to me from undeniable Proofs and Precedents from our antient Hiſtories and Laws, that the preſent Convention had done nothing in voting the Throne vacant, and then placing the Prince and Princeſs of *Orange* therein, but what may be juſtified by the fundamental Laws and Conſtitutions of the Kingdom; for I muſt ſtill believe (till I am better inſtructed) that there can be no *Interregnum* in *England*, but that it hath been from the firſt Inſtitution of the Government an Hereditary Monarchy, where the next Heir by Right of Blood (unleſs in ſome manifeſt Uſurpations) has always ſucceeded to the laſt Predeceſſor: As alſo our beſt Lawyers with one Conſent maintain in their Books of Reports, and the learned *Finch*, in his Deſcription of the Common Law, lays it down as an undoubted Maxim, *That the King never dies*; and therefore it ſeems altogether new and unheard of before, for the Convention thus to declare the Throne vacant: for admitting that King *James* had never ſo juſtly forfeited or abdicated the Kingdom (term it which you pleaſe) yet certainly there could be no Vacancy of the Throne, ſince the next Heir by Blood ought immediately to have been declared King, or Queen, and ſo placed therein: whereas we heard in the Country, that there was almoſt ten days time before the Lords and Commons could agree whether the Crown ſhould be declared vacant, or not; and when it was ſo declared, it took up almoſt a Week's time more before they could agree who ſhould be placed therein. Whereas it was a difficulty only of their own making: for ſure the Prince of *Wales* (tho it is

true he is carried out of *England*) ought to have been immediately declared King, as was done in the Caſe of *Edward* III. who was ſo declared upon the Depoſition or Reſignation of King *Edward* II.

F. Tho I grant, ever ſince the Crown has been claimed by Deſcent, the Law has gone as you have cited it, and that *Finch*'s Law lays it down for a Maxim, I ſhall not deny; but from the Beginning or Original of Kingly Government, (whether we look before or after your Conqueſt) it will appear, that the Throne was often vacant, till ſuch time as the Great Council of the Kingdom had agreed who ſhould fill it. And to ſhew you I do not ſpeak without good Authority, pray tell me (if this Maxim had then obtained) why after the Death of *William* I. his eldeſt Son *Robert* Duke of *Normandy* did not immediately take upon him the Title of King of *England*, or at leaſt have done it after the Death of *William Ruſus*? who, you know, was placed on the Throne, not by Right of Inheritance, but by his Father's Teſtament confirmed and approved of (according to the antient *Engliſh-Saxon* Cuſtom of Succeſſion) by the common Conſent of the great Council of the whole Kingdom; and yet notwithſtanding, after the Death of this *William*, *Henry* his younger Brother ſucceeded him by the free Election and Conſent of the ſame Council, and yet that Duke *Robert* ſhould never in all his Life-time take upon him the Title of King. Pray tell me likewiſe (if this Maxim had been then known) why *Maud* the Empreſs, immediately upon the Death of her Father King *Henry* I. did not take (nor yet her Husband the Duke of *Anjou* in her Right) the Title of King and Queen of *England*, tho ſhe had had Homage paid her, and Fealty ſworn to her in the Life-time of her Father, as the immediate Succeſſor to the Crown; and yet notwithſtanding, the utmoſt Title ſhe could aſſume was that of *Domina Anglorum*, Lady or Miſtreſs (not Queen) of the *Engliſh*; whilſt *Stephen*, who had no other Title but the Election of the great Council of the Nation, held both the Crown and Title of King as long as he lived? As alſo why *Arthur* Duke of *Britain*, who, according to the now received Rules of Succeſſion, was the next Heir to the Crown upon the Death of King *Richard* I. never took upon him the Title of King, unleſs it were that he very well knew that his Uncle King *John* had been placed in the Throne by the common Conſent and Election of the great Council of the Kingdom? So likewiſe after the Death of King *John*, why *Henry* his Son was not immediately proclaimed King, till ſuch time as the great Council of the Clergy, Nobility, and People, had met and agreed to ſend back Prince *Lewis*, whom they had choſen for their King (tho not being crowned, he never took upon himſelf that Title) and ſo choſe *Henry* III. (then an Infant) for their King? Laſtly, Why all theſe Princes, *viz.* *Henry* II. *Richard* I. and *Henry* III. who according to your Notions were undoubted Heirs of the Crown, never took upon them the Title of Kings of *England*, nor are ſo ſtiled by any of our Hiſtorians, till after their Elections and Coronations, if it had not then been received for Law, that it was the Election of the People, and Coronation ſubſequent thereunto, that made them Kings; and till this was performed (tho they might look upon themſelves as ever ſo lawful Succeſſors) the Throne was notwithſtanding eſteemed in Law vacant?

Therefore as for your Inſtance of King *Edward* III's immediately ſucceeding upon the Reſignation of his Father (if you pleaſe better to conſider of it) that makes againſt you; for it is plain from *Th. Walſingham*, and *H. de Knyghton*, that Prince *Edward* ſucceeded not to the Crown by Succeſſion, but the Election of the great Council or Parliament: the words are expreſs, *Huic Electioni univerſus Populus conſenſit.* And this was alſo owned by *Edward* II. himſelf, who when the Commiſſioners of all the Eſtates of Parliament came in all their Names to renounce their Homage to him, yet in the midſt of all his Sorrow he gave them Thanks, *Quod Filium ſuum Edwardum poſt ſe regnaturum eligiſſent*; which plainly ſhews, that the Parliament had then ſuch a Notion of a Forfeiture proceeding from his Depoſition, for violating the fundamental Laws of the Kingdom, that the eldeſt Son and Succeſſor could pretend no other Right to it (even in the Judgment of the late King himſelf) but what proceeded from their Election.

M. I cannot deny but what you have now urged from matter of fact, may appear very plauſible to your ſelf, and thoſe of your Notions; yet if it be looked

looked closer into, I doubt not but the known Laws then received, and the Notions the People had then of a lineal Succession by Right of Inheritance, will prove directly contrary to the matter of Fact: For you know very well, *à facto ad Jus non valet consequentia*; but that all the Princes you mentioned, except the three last, were really Usurpers, and not lawful Kings, I shall let you see by evident Authorities from the Historians of those times. For, in the first place, tho I grant *William Rufus* succeeded to the Crown by his Father's last Will, which was certainly unlawful (as being contrary to the received Laws of Succession in *Normandy* as well as *England*) yet it was not by Election of the People, as you suppose, but by the Kindness of Archbishop *Lanfranc* his Godfather, and the Favour of the greater part of the *Norman* Barons, who came over with his Father, as well as out of Hatred to Duke *Robert* his elder Brother, that he was thus made King. So that *William Rufus* claimed as a testamentary Heir, and by reason of that Claim was advanced to the Throne by the Assistance of *Lanfranc*'s and the Bishop's Faction, who then swayed the Nobility and People, but yet never owned any Election from them; so that if you rightly consider this Story, you cannot call it an Election, but a Designation or Nomination by his Father *William* the Conqueror, and consented to by the major part of the Bishops and Lords of the Kingdom, but not by their Election or Decree as a Common Council, as you suppose. B. H. S. *pag.* 368.

But that for all this, Duke *Robert* his Brother, being assisted by *Odo* Bishop of *Bayeux*, and the Earl of *Kent* his Uncle, as also divers other *Norman* Lords, who, being satisfied of his Right, raised a War in *England* against *William*, and great mischief was done on both sides, till at last a Peace was made between them upon these Conditions, among others (as *Matthew Westminster* relates it) That because of the manifest Right Duke *Robert* had to the Crown, he should have a yearly Pension of three thousand Marks out of the Revenue of *England*; and he, of the two Brothers, that survived the other, if he died without Children, should be Heir to the Deceased. And so far were they from thinking this Agreement stood in need of the Ratification of a great Council, that there were but twelve of the principal Men on each side sworn to see it duly observed. S. D. *pag.* 7. F. 236.

But if we come to consider the next putting by of Duke *Robert* from his Right to the Crown, you will find it to have been done with a far less colour of Right than the former; for he being then absent in the *Holy Land*, at the time of *Rufus*'s Death, *Henry* his younger Brother laid hold of the Opportunity, and assembling divers of the great Men of the Kingdom, he promised them to make a full Restitution of all their antient Laws and Liberties, and confirm them by his Charter, and abrogate such severe ones as his Father had made; thereupon they did unanimously consent to crown him King. Now I cannot see how this (managed with so much Artifice) Corruption can properly be called an Election, since that ought to be a deliberate sedate Action, and at which all the Persons concerned ought to be present. But this could not possibly be; for King *William* was killed on the 2d of *August*, and buried the next day; and the day after, being Sunday, this pretended Election was made: And the *Saxon* Chronicle tells us, "That those great Men, who "were near at hand, chose his Brother *Henry* King." So that this looks more like the Combination of a Faction of some Bishops, Lords, and great Men, than the free Election of a King; since it was impossible for all that were, or ought to be present from all Parts of the Kingdom, to have notice to assemble and dispatch that great Business in two days time. S. D. *pag.* 7. Anno 1100.

But to let you see that Duke *Robert* did not sit down contented with this Usurpation upon his Right; as soon as ever he came from the *Holy Land*, he strait made war upon his Brother, and many great Men of the *Normans* took his part. And this War was eagerly carried on for some time, and Duke *Robert* landing in *England* with an Army, King *Henry* marched against him with all his Forces; but (as the *Saxon* Chronicle also tells us) some principal Men going between them, brought them to an Agreement, upon condition that King *Henry* should pay Duke *Robert* three thousand Marks Pension yearly, and that he of the Brothers who survived the other, should be Heir of all *England* and *Normandy*, unless the Party deceased should have Children of his own. So that tho I grant King *Henry* recites in his Charter in *Matthew Paris*, that Ibid. B. H. S. *pag.* 369.

that he was crowned King by the Common Council of the Barons of *England*; yet his saying so could give him no Right, and he must say this or nothing, for no other Pretence or Title he could have. And there never was any other Usurper in his Circumstances, but must say that, or some such thing, to make out a Title: and therefore to answer your Question, why Duke *Robert* took not upon himself the Title of King, neither upon the Death of his Father, nor after that of his elder Brother; I think this may serve for an Answer, that he parting with his Right to both his Brothers successively, he then looked upon it as needless to take the Title of King upon him, as not looking upon himself then to be so.

F. I confess you have from your Doctor, together with some Assistance of your own, made a very cunning Gloss upon these two great Instances of Vacancy and Election, to evade, if it were possible, that Right which the great Council of the Kingdom then challenged to themselves; and therefore I shall make bold strictly to examine what you have now said. In the first place, as to the Title of King *William Rufus*, tho I grant it was founded upon his Father's Testament, yet you see that this was not good alone, without the Consent and Approbation of the Common Council of the Kingdom. I think I have sufficiently proved at our last Meeting but one, when we discoursed of the force of the like Testament made by King *Edward* the Confessor to King *William* I. which according to the *English-Saxon* Law (that was still observed) was never valid, until confirmed by the Consent of the *Wittena Gemot*, or Council of the Wisemen; that he that had both these, whether next Heir by Blood or not, was always esteemed as lawful King, as I have also proved from the Testament of King *Alfred*. And tho you will take no notice of it, yet was this Testament of King *William* I. then produced and read in the Common Council of the Bishops, Earls, and Barons of the Kingdom, as appears by all the antient Historians who treat of this matter. I shall only give you a
Pag. 231. taste of them: *Matthew Paris* expresly relates the Circumstances of it, in these words; *Optimates frequentes ad Westmonasterium in Concilium convenere, ubi loci post longam consultationem Gulielmum Rufum Regem fecere.* And Abbot *Brampton*
Col. 983. tells us, that it was done in a full Council, *convocatis Terræ Magnatibus*; so that here was nothing wanting to a full Election or Confirmation at least of King *William*'s Title, and till this was done, it is plain the Throne was vacant.

But as for the Claim that Duke *Robert* made to the Crown, tho I do not deny but he might think himself to have a just Title to it, by a received Custom among divers Nations, by which the eldest Son is looked upon to have a Right before the younger; yet that this is no Law of Nature, and consequently not Divine, I think I have sufficiently proved at our second Meeting. But that this Right of Succession of the eldest Son was no fundamental Law of this Kingdom, I think I can sufficiently prove from our *English-Saxon* Histories, as well as Laws. And as for what you say concerning those *Norman* Lords and Bishops who joined with Duke *Robert*, after his Brother was crown'd King, it is called no better than Treason by all the Writers of those times; for *Florence* of *Worcester*, and *Sim.* of *Durham*, both tell us, that the King thereupon called together the *English*, and opened unto them the Treason of the
An. D. 1087. *Normans*; and the *Saxon* Chronicler, who seemed to have lived about that time, compares the Treason of Bishop *Odo* to that of *Judas Iscariot* against our Lord. And tho I grant King *William* might make such an Agreement with his Brother Duke *Robert*, as you mention; yet as for the three thousand Marks Pension, which you say he was to pay him, I very much doubt it; since no Historian but *Matthew* of *Westminster*, who lived between two and three hundred years after, makes mention of it: and therefore I think it is to be referred to the following Agreement betwixt this Duke and his Brother King *Henry*, which the *Saxon* Chronicle expresly mentions.

Having now examined and cleared the Title of King *William Rufus*, I come next to justify that of King *Henry* I. to the Crown, notwithstanding all you have alledged against it, which yet is no more than what you said before, that Duke *Robert* had an Hereditary Right, and therefore he could not be put by, which is to beg the Question: for you cannot prove to me that he had this Right either by the Law of Nature, the Law of *England*, or the Law of *Normandy*; not by the two former, as I have already proved: for your Conqueror himself

himſelf being a Baſtard, had no better Title to the Dutchy of *Normandy* than his Father's laſt Will, before he went to the *Holy Land*; which was not good without the Conſent of the Nobility of that Dutchy, as appears by the Hiſtorians of that time. So that the greateſt Objection you have to make againſt King *Henry*'s being elected in a true Common Council of all *England*, is this, that the time was ſo ſhort between the Death of *William Rufus* and his Election, that it was impoſſible for all the Parties that had Votes to be there preſent, which is a very bold Aſſertion; for how can you or your Doctor tell, that at the time when King *William* was kill'd, he might not then have held a great Council at *Wincheſter* (where he then lay) who might immediately upon his Death chuſe his Brother *Henry* for their King? for it is certain the Election was there the Day before his Coronation at *London*; and therefore it was very raſhly done to affirm, that this Election was not in a Common Council of the Kingdom, when all the Hiſtorians, and particularly *W. Malmesbury* tells us the manner of it, and the Diſputes there were about it, *viz.* that *Henry* was elected King as ſoon as King *William*'s Funerals were over, *Aliquantis tamen ante Controverſiis inter proceres agitatis, &c.* And *H. de Knyghton* reciting the Cauſe why Duke *Robert* was ſet aſide, *viz.* becauſe he had been always contrary and unnatural to the Barons of *England*; therefore *quod plenario conſenſu & conſilio totius Communitatis Regni, ipſum refutaverunt, & pro Rege omnino recuſaverunt, & Henricum fratrem in Regem erexerunt:* which plainly ſhews, that it was the Opinion of all the antient Writers, out of whom *Knyghton* took this Paſſage, that this Election was made by the free Conſent, and in a full Council of all the whole Community of the Kingdom. Nor does the After-claim of Duke *Robert* to the Crown at all alter the Caſe, for the Reaſons already given, as alſo becauſe the Agreement that was made between them, that he that ſurvived ſhould ſucceed the other, was never confirmed or agreed to by the great Council of the Kingdom; and therefore thoſe *Norman* Lords that joined with Duke *Robert* here in *England*, are juſtly taxed by *William* of *Malmesbury*, and the *Saxon* Chronicle, with Infidelity and Rebellion. And tho I grant that *Matthew Paris* (or rather *Roger* of *Wendover*, whom he tranſcribes) ſeems to condemn King *Henry*'s taking the Crown as unjuſt, and contrary to Right, and that he therefore feared the Juſtice of God, *eo quod fratri ſuo primogenito, cui jus Regni manifeſtè competebat, temere uſurpando injuſtè nimis abſtulerat:* yet this Author writing about the middle of the Reign of King *Henry* III. who had ſucceeded his Father by a pretended Right of Inheritance as well as Election, it is no wonder if he, who writ near a hundred years after this Tranſaction, ſhould give his Judgment in this matter according to the common Opinion and Prejudice of that Age, and muſt certainly ſpeak by gueſs; for how could he otherwiſe affirm (unleſs he had been acquainted with that King's Thoughts) as he doth in the ſame place, that he felt *Conſcientiam ſuam in obtentu Regni cauteriatam?* ſince no other Writer, either at that time, or after it, does thus blame King *Henry* for taking the Crown.

L. V. *p.* 156.

Col. 2374.

Anno 1104.

But as for the account you give why Duke *Robert* never took upon him the Title of King, if the Throne had not then been looked upon as vacant, becauſe of the Agreement which he made with his Brothers, by which he parted with his Right for a Penſion during his Life, it is not at all ſatisfactory: for, in the firſt place, neither of theſe Agreements were made till above a year after his pretended Title did accrue to him by the Death of his Father and Brother; and therefore he ought, if he had looked upon himſelf as true King, to have immediately taken the Title upon him, which he never did. So likewiſe the Agreement it ſelf makes wholly againſt your Notion of any Hereditary Succeſſion to the Crown to be then ſettled, ſince the main Clauſe in both theſe Agreements is, that the Survivor ſhould be Heir to him that died firſt, unleſs he left Children of his own to ſucceed him: which plainly ſhews, that in the Opinion of both thoſe Princes, and of the great Men that ſwore on either ſide to ſee it obſerved, they knew of no ſuch ſettled Right of Succeſſion in their Heirs, which they themſelves could not part with, or elſe this Clauſe had been wholly in vain; ſince both King *William* and King *Henry*'s Children were to have ſucceeded to the Crown of *England*, by virtue of both theſe Agreements, before the Sons of Duke *Robert*, had his Son *William* (who was only Earl of *Flanders*) ſurvived him.

But

But now, if you pleaſe, you may proceed with your other Exceptions againſt the reſt of the Inſtances I have here given you of the Vacancy of the Throne, till ſuch time as the Common Council of the Kingdom had agreed whom to place therein.

M. As to what you have ſaid in defence of the Vacancy of the Throne, after the Death of King *Henry* I. it carries leſs ſhew of Reaſon than what you urged in the former Caſes; ſince all Writers agree that this was a manifeſt Uſurpation in *Stephen*, who could pretend no ſort of Title to the Crown himſelf, as well as Perjury in the Biſhops, Lords, and great Men of *England*, who having ſworn Fealty to King *Henry*'s Daughter *Maud* in his Life-time, made *Stephen* Earl of *Blois* their King: therefore *William* of *Malmesbury*, and all the Writers of thoſe times, accuſe *Stephen* of downright Perjury and Uſurpation; and likewiſe relate, that he was advanced to the Crown thro the power of the *Londoners* and Citizens of *Wincheſter*. But yet all theſe Endeavours had been in vain, unleſs he had been aſſiſted by his Brother *Henry* Biſhop of that City, and then the Pope's Legate in *England*, and favoured by the Archbiſhop of *Canterbury*, who crowned him: And yet for all this there was but a very ſmall Faction of the Biſhops and Lords who were for his Coronation; for *W. Malmesbury* tells us, *Coronatus eſt ergo in Regem Angliæ Stephanus, tribus Epiſcopis præſentibus, nullis Abbatibus, pauciſſimis Optimatibus.* L. 1. p. 178.

And many of the Nobility and great Men of *England* were ſo ſenſible of this, that being headed by *Robert* Earl of *Glouceſter* (the Empreſs's baſe Brother) they raiſed a War againſt *Stephen*, which after her coming over hither was carried on with great Vigour. And tho I grant, that after divers Changes of Fortune the Empreſs was at laſt forced to quit the Kingdom, yet her Son Duke *Henry* did not fail to continue his Claim to the Crown in right of his Mother; and coming over into *England*, renewed the War againſt King *Stephen*, which was at laſt compoſed by an Agreement between them, which, as *Matthew Paris* and *Matthew Weſtminſter* relate it, was thus: "That King *Stephen* acknowledged, in an Aſſembly of Biſhops and other great Men of the Kingdom, that Duke *Henry* had an Hereditary Right to the Crown; and the Duke thereupon as kindly granted, that King *Stephen* ſhould peaceably poſſeſs it during his Life." So that it is certain, till this Agreement (even by his own Acknowledgment) he had no Right to it: and tho I grant that the Empreſs *Maud*, for ſome Reaſons we are not able to give a true account of, never took upon her the Title of Queen; yet it is very certain that ſhe acted as ſuch during all the time ſhe was in *England*, receiving Homage and Fealty from thoſe Lords and others who came over to her ſide, and alſo granting Charters and conferring Honours by the Title of *Anglorum Domina*; which ſhews, ſhe looked upon her ſelf to be the ſupreme Governeſs of the Kingdom, tho not under the Title of Queen. So that I think you can find nothing in this Tranſaction that can ſupport your Notion of Vacancy. M. Par. *f.* 86. M. Weſt. 246.

F. Pray give me leave to anſwer what you have now ſaid before you proceed farther: Firſt, I cannot excuſe either King *Stephen* for taking the Crown, or the Biſhops and great Men that ſet it on his Head, from Perjury and Injuſtice; ſince the Empreſs *Maud* had been before, in a Common Council of the whole Kingdom, declared the lawful Succeſſor, and that Fealty had been ſworn to her as ſuch. All that I inſiſt upon in this Affair, is this, that *Quod fieri non debet, factum valet:* And tho this ought not to have been done, yet when once done it did ſtand good; and if whilſt the Throne was vacant, King *Stephen*, by the Election and Conſent of the Biſhops and great Men of *England*, was placed therein, he was therefore looked upon as true and lawful King as long as he lived. And this was indeed the Reaſon why the Empreſs never took upon her the Title of Queen of *England*, no not when ſhe had taken King *Stephen* Priſoner, and one would have thought might have juſtly done it as a Conquereſs: But yet ſhe forbore it, becauſe that Title was not then to be taken without the Conſent of the great Council of the Kingdom, which I cannot find ſhe ever held, her Party being not great enough to make one. And tho I cannot deny but that ſhe might in ſome Particulars exerciſe ſome Prerogatives of Royal Power, yet this was only upon a pretence of her being elected and ſtiled by this Title of Lady of the *Engliſh*, in a Synod of the Clergy at *Wincheſter*, by the Procurement of *Henry* the then Biſhop of that See, and

the

the Pope's Legate, who was now turned againſt his Brother King *Stephen*: For ſhe was never generally received nor owned as Queen, nor did ſhe ever exerciſe thoſe great Prerogatives of Sovereign Power, *viz.* calling of great Councils, making of Laws, raiſing of Taxes, or coining Mony.

But whereas you repreſent King *Stephen* to have been elected but by a very ſmall Party of the Biſhops and Noblemen of *England*, yet it is very much to be doubted whether *William* of *Malmesbury* (who dedicated his Hiſtory to *Robert* Earl of *Gloceſter*, King *Stephen*'s greateſt Enemy) being no Friend to his Title, is to be altogether credited in this matter. For *Henry* of *Huntington* (who lived not long after) tells us expreſly, that *Omnes qui Sacramentum juraverant, tam Præſules quam Conſules & Principes, aſſenſum Stephano præbuerunt & hominium fecerunt.* And it is alſo as certain that the Earls of *Gloceſter* and *Cheſter* (the two greateſt Men of *England*) did then likewiſe ſwear Allegiance to him, and own his Title, tho they afterwards revolted from him again; yet could they do nothing conſiderable againſt him, till his own Brother the Biſhop of *Wincheſter* revolted alſo from him, upon pretence that the King had violated the Rights of the Church. And tho it is true that after the Empreſs's Departure out of *England*, Duke *Henry* her Son came over and proſecuted the War againſt King *Stephen*, yet could it not be in his own, but his Mother's Right, who was then alive. Nor could the Agreement you mention be made between the King and the Duke, as having then a Right to the Crown in his own Perſon, ſince we read of no Conceſſion the Empreſs his Mother had made to him of it; and therefore whatever Title *Henry* could claim thereunto upon the Death of King *Stephen*, it was wholly due to this King's adopting him for his Son, and declaring him his Succeſſor, upon condition that he himſelf ſhould enjoy the Crown during his Life: which Agreement was ſolemnly confirmed and ratified, and that by Oath, in a full Aſſembly of all the Biſhops, Lords, and great Men of the Kingdom. For *Ordericus Vitalis*, in his *Annals*, pag. 989. is very expreſs in the manner of this great Tranſaction, in theſe words: *Sic tamen in præſentiarum ipſe Rex & cæteri potentes Sacramento firmarent quod Dux poſt mortem Regis, ſi tempore eum ſuperviveret, pacifice & abſque contradictione Regnum haberet*; therefore as long as the Empreſs *Maud* lived (who died after her Son King *Henry*'s coming to the Crown) 'tis plain he could have no Hereditary Right to it, notwithſtanding what *Matthew Paris* and *Matthew Weſtminſter* (who lived long after theſe Tranſactions) have ſaid to the contrary, who therein are to be looked upon as Authors that ſpeak their own ſenſe, rather than that of the Writers of thoſe times.

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Vid. Hen. Hunt. *p.* 395. Richard. de Hagulſtad. col. 314. Joh. de Hag. *p.* 282.

M. I confeſs what you have urged in this matter, concerning Duke *Henry*'s being admitted as Heir of the Kingdom during the Life of his Mother the Empreſs *Maud*, ſeems to the purpoſe: and there could be nothing ſaid againſt it, but that this was done by the Conceſſion of the Empreſs her ſelf, who ſurrendred all her Pretenſions to her Son, tho we have no particular account of it; or elſe (which is more likely in my Opinion) that the Government of Women being then unknown in *England* and *Normandy*, and conſequently odious to the *Engliſh* and *Norman* Nobility, and for which reaſon chiefly they had before ſet this Empreſs aſide, they thought they did in effect perform their Oath to her, when they acknowledged her Title in her Son Duke *Henry*, who is ſaid, by the Hiſtorians of thoſe times, to have ſucceeded *Stephen Jure Hæreditario*; which could not at all agree with your Notion of his receiving his Title from the Conſent or Election of the great Council.

But I ſhall paſs over this, and come to your next Inſtance of the Vacancy of the Throne, which you pretend to have been upon the Death of King *Henry* the Second. Now your only Argument to prove this, is, that King *Richard*, tho his eldeſt Son alive, was only called Duke of *Normandy*, and never King of *England*, till after his Coronation; whoever will but conſider the Circumſtances of this matter, will find that he was indeed owned for King of *England* before his pretended Election or Coronation. For before his coming into *England* to be crowned, *Roger Hoveden* tells us, "That every Freeman "of the whole Kingdom, by the Command of his Mother Queen *Eleanor*, "ſwore, *Quod fidem portabit Regi Angliæ Richardo Regis Hen. filio:*" which plainly ſhews, that he was then by common Intendment looked upon as King before his Coronation: Tho I confeſs that this very Author alſo relates, that

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all the Estates of the Kingdom were assembled at *London*, by whose Counsel and Assent the said Duke was consecrated and crowned King of *England*; and tho *Ralph de Diceto*, then Dean of *St. Paul's* (who in the Vacancy of that Church then supplied the Office of the Bishop at King *Richard's* Coronation) hath this Passage; Col. 647. *Comes itaque Pictavorum Richardus Hereditario Jure promovendus in Regem, post tam cleri quam populi solemnem & debitam electionem involutus est triplici Sacramento, &c.* Now what can this solemn and due Election here signify? Or what can it mean farther, than that *Richard*, being King by Hereditary Right, was so owned and recognized by the Clergy and Laity?

F. I desire I may reply to this before you proceed farther. I confess what you say about the Empress *Maud's* Surrender of her Right to her Son Duke *Henry* would be considerable, if you had any Authorities from our antient Historians to support it; but since you have not, I look upon it as no better than a mere Surmise of those of your opinion, that the Crown was then enjoyed by an Hereditary Right, without any Consent or Election of the People. And so likewise is your other fancy, that because Women were then looked upon as uncapable to govern, therefore the Bishops and great Men of the Kingdom supposed they had sufficiently performed their Oath of Allegiance to her, by acknowledging her Son Duke *Henry* for the right Heir of the Crown. Now if this had been so, pray tell me to what purpose King *Henry* I. (Father to the Empress) should have made all the Estates of *England* swear Fealty to his Daughter, if a Woman had been then looked upon as uncapable to govern? Or to what purpose should the Clergy, in the Council at Hov. *p.* 106. *Winchester*, chuse this Empress, as the King's Daughter, Lady both of *England* and *Normandy*, as *William* of *Malmesbury* tells us expressly that they did, and that he was present at it? Or how could the great Council of the Kingdom believe that they had sufficiently satisfied their Oath to the Daughter, in conferring the Allegiance that was due to her upon her Son? I am sure no Heiress of the Crown would look upon that as a good Performance of their Oath at this day. When you can answer me these Queries, I shall be of your Opinion in this Point, but till then I beg your pardon.

But as to what you say against the Vacancy of the Throne upon the Death of King *Henry* II. till King *Richard* was elected and crowned, I desire no better Authority to the contrary, than those very Authors you have now cited for your Opinion: For first *Hoveden*, in the very place you have quoted him, says, "That the Duke was to be [in *Latin*, *in Regem*] crowned King by the Coun-"sel and Assent of all the Parties there present." Now if I understand any thing of Grammar or Sense, he was not King before, and therefore needed their Assent to make him so. Likewise in the next Quotation from *Ralph de Diceto*, the Duke is said, *Hereditario Jure promovendus in Regem*; which words being in the Future Tense, shew he was not then, but was to be promoted to that Dignity. Now if his Hereditary Right alone could have done it, then to what purpose are all these words foregoing? So that tho this Right gave him a fair Pretence to succeed to the Crown, yet it is plain from both the Authors you have quoted, that he did not till after the due Consent and Election of the Clergy and People: So that after all, your Questions (what can this solemn and due Election signify? or what can it mean farther, than that *Richard* being King by an Hereditary Right, was so owned and recognized by the Clergy and Laity?) will receive a very easy Answer from what has been already said, till you can shew me out of any Dictionary, that *Consilium* and *Assensus* (which are the words of *Hoveden*) and the words *solemnis & debita Electio*, ever signified an Owning or Recognition of an Hereditary Right.

I confess the only colour you have for your Interpretation of those words in *Hoveden*, which you have now cited, is Queen *Eleanor's* making every Freeman of the Kingdom swear Fealty to *Richard* King of *England*, as to their Liege Lord: from whence you would infer, that by common Intendment of Law he was looked upon King of *England* before he was crowned, and consequently there could be no Vacancy of the Throne. Now admit that he was commonly called King before he was crowned, or that the Queen his Mother would make the People swear to him as such; yet that could not make him so, since the same Historians also tell us, that *Hubert* Archbishop of *Canterbury*, and *William* Earl Mareschal, made the People of *England* take a like Oath to Earl

John

John as their Lord (not King) immediately after the Death of King *Richard* his Brother; and yet I ſuppoſe you will not affirm, that their ſwearing Fealty to him as their ſuperiour Lord, made him King, or gave him a juſt Title to the Crown. And I deſire you, or any indifferent Man, to tell me which was *Hoveden*'s Opinion, whether this ſwearing Fealty was a ſufficient Declaration of his being King, or elſe all thoſe other Expreſſions which ſignify the contrary, when immediately before his Coronation he only calls it *Ducem Richardum, qui coronandus erat in Regem*; which I think is as plain a Diſtinction of his being a Duke before he was crowned, and a King afterwards, as words can make.

M. I ſee it is in vain to urge this Point any longer, and therefore I ſhall proceed to your next Inſtance of the Vacancy of the Throne, after the Death of King *Richard*, until King *John* was placed therein. Now tho it is certain that this Prince was an Uſurper upon his Nephew Duke *Arthur*, yet whether he was ever elected in a Common Council of the Biſhops, Earls, and Barons of the Kingdom, is very doubtful: But ſuppoſe he were, it was done wrongfully, and to the prejudice of *Arthur* Duke of *Britain*, the right Heir to the Crown, who being young and a Stranger, it is no wonder if he were put by, and his Uncle, who was a Man, and better acquainted with *England*, having the Intereſt of the Archbiſhop of *Canterbury*, and moſt of the great Men, got the Crown from him; and yet for all that *Hoveden*, who was alive at this time, ſpeaks not a word of his being elected, but only that upon his coming into *England*, he was received by the Nobility, and crowned by *Hubert* Archbiſhop of *Canterbury*. So that there is not one word there of any Election by, but only a Submiſſion from, the Lords Spiritual and Temporal to King *John*, and a Recognition that he was their King. Nor indeed could he need it, if it be true what the ſame Author tells us, "That when King *Richard* deſpaired of Life, Hov. *f.* 449.
"he deviſed to *John* his Brother the Kingdom of *England*, and all his other
"Lands, and cauſed all thoſe that were preſent to do him Fealty." And this is related by *Hoveden*, in all probability an Eye-witneſs of theſe Tranſactions.

So that the firſt Author we find to mention any thing of the Particulars of this pretended Election, is *Matthew Paris*, who has given us the Speech which Matt. Pariſ.
the Archbiſhop made at this ſuppoſed Election, and alſo recites the Arch- *f.* 197.
biſhops, Biſhops, Earls, and Barons, and all others who ought to be at his Coronation. The Archbiſhop ſtanding in the middle of them, ſaid thus:
"Hear all of you, your Diſcretion ſhall know, that no Man hath Right to
"ſucceed in this Kingdom, unleſs, after ſeeking God, he be unanimouſly cho-
"ſen by the Univerſity of the Kingdom:" (that is, thoſe that are here ſaid to meet at *London*.) The reſt of the Speech needs no repeating, only he lays it down for Law (which I think was never heard of before) "That if any of
"the Progeny of the dead King did excel others, they ought more readily to
"conſent to the Election of him." And ſo upon this Speech made in behalf of Earl *John*, and full of a great deal of fulſome Flattery, he was declared King.

But to let you ſee what a ſort of Man this Archbiſhop *Hubert* was, take what the ſame Author tells us in the ſame place; that being asked afterward why he ſaid theſe things, he anſwered, "That he gueſſed, and was aſcertained by cer-
"tain Prophecies, that *John* would bring the Kingdom and Crown into great Ibid.
"confuſion; and therefore leſt he might have too much liberty in doing it,
"he affirmed, he ought to come in by Election, and not by Hereditary Succeſ-
"ſion." Now tho this learned Doctrine of the Archbiſhop aſſerts a Right of Election in the Convention of Biſhops, Earls, Barons, *&c.* yet by his own Anſwer, when he was asked why he ſaid theſe things, it clearly diſcovers it to be only a Deſign and Artifice in the Archbiſhop, to cauſe them to ſet up and make *John* King, and in which alſo he denies any ſuch Right of Election. But ſince *Hoveden*, nor any other of our antient Hiſtorians make mention of this Election, but only of his Coronation, and the Biſhops, Earls, and Barons aſſiſting at it, not giving their Conſents to it, it may very well be, that that Story of an Election, and this Speech of Archbiſhop *Hubert*, might be only an Invention of *Matthew Paris*, or rather of *Roger* of *Wendover*, from whom he took moſt of his Hiſtory: but that this Doctrine of the Archbiſhop, concerning the Election of our Kings, if meant according to the modern underſtanding of it, was then new, *Gervaſe*, a Monk of *Canterbury* in the year 1122.

who also speaks of the Coronation of *Henry* I. says, it was manifest, and known almost to all Men, that the Kings of *England* were only obliged and bound to God for the Possession of the Kingdom, and to the Church of *Canterbury* for their Coronation; *Manifestum est autem & omnibus fere notum, Reges Angliæ soli Deo obligari & teneri ex ipsius regni adoptione, & Ecclesiæ Cantuariensi ex Coronatione.*

Col. 1338. N. 30.

But that King *John* was looked upon as an Usurper, is very certain, since besides some of the honest *English* Nobility that took Duke *Arthur*'s part, the King of *France* did also make war upon King *John* on his Nephew's account, because he looked upon him as true Heir to the Crown; and therefore when King *John* had privately made away his said Nephew in Prison, the King of *France* summon'd him, as Duke of *Normandy*, and Peer of *France*, to answer for the Murder in an Assembly of the Peers of *France* at *Paris*; where, for his refusing to appear, he was condemn'd to death, and his Dukedom of *Normandy* declared forfeited to the King of *France*.

F. I confess you have said as much as can be, to prove that King *John* had no Hereditary Right to the Crown, nor was so solemnly elected to it (as *Matthew Paris* relates;) but yet for all this, I think I may very justly oppose all that you have now said upon this Head: for in the first place, it was then very much disputed (as it hath been also since that time) if an elder Brother died, and left a Son a Minor, whether his younger Brother or his Son should succeed. For tho the People of *Anjou*, and those of *Guienne*, own'd Duke *Arthur* for their Prince, yet the States of *Normandy* were of another mind, and by virtue of King *Richard*'s Testament, he was immediately after his Death invested with that Dukedom; nor was he then at all opposed in it by the King of *France*, tho supreme Lord of the Fee: and as for *England*, besides his Brother's Testament, whereby he left him Heir of all his Territories, it was also then generally held in *England* as most consonant to the antient *English-Saxon* Law of Succession, that the Uncle should succeed to the Crown before the Nephew. Therefore it is no wonder if Duke *Arthur* found so small a Party here, not any Bishop, Earl or Baron (as I read of) owning his Title: and as for the King of *France*, it is also as certain, that he did at first own King *John* for Lawful King of *England*, and Duke of *Normandy*, and entred into a Treaty of Peace, and made a League with him as such; tho it is true that afterwards, when he had a mind to pick a quarrel with that King, he then set up Duke *Arthur*'s Title. And tho this Duke was made away in the beginning of King *John*'s Reign, yet did not the King or Peers of *France* ever take any notice of it, till about twelve or thirteen Years after, when he had now unjustly conquered all *Normandy*, and almost all that King's other Territories in *France*; and then wanting a Title to keep them, he began this Prosecution you mention against him, and upon his Non-appearance he was condemned unheard. But that the King of *France* himself, and all the great Men of that Kingdom, did look upon him to have been lawful King of *England*, appears by that Speech which *Matthew Paris* relates to have been made after King *John*'s Deposition by the Barons of *England*, by a Knight whom Prince *Lewis* of *France* had made his Procurator, to treat with the Pope's Legate about his coming over hither: "where, when he had "recited that King *John* had been condemn'd by his Peers for the Death of his "Nephew *Arthur*, and that he had been also for his great Cruelties and other "Wickedness deposed by the Barons of *England*; and farther reciting that the "said King, without the Assent of his Nobility had resign'd his Kingdom to "the Pope to hold it of him at an annual Tribute of a thousand Marks:" (the rest I will give you in *Latin*, because you your self may translate it) *Etsi Coronam Angliæ sine Baronibus ullicui dare non potuit, potuit tamen dimittere eam; quam statim cum resignaverit, Rex esse desiit, & Regnum sine Rege vacavit, vacans itaque Regnum sine Baronibus ordinari non debuit*, &c. So that you may see that by the Order of Prince *Lewis*, and the Allowance of the King of *France* himself, every one of our Opinions are maintain'd for good: First, That King *John* was, before the Resignation of his Crown to the Pope, true and lawful King. Secondly, That by that Resignation to the Pope, he did dismiss or *abdicate* his Right to it; (for so I suppose the word *dimittere Regnum* is here to be render'd.) Thirdly, That upon this Dismission of the Crown, the Throne became vacant. Fourthly, That upon this Vacancy the Kingdom could

Fol. 236.

not

not be confer'd without the Consent of the Barons, that is, the great Council of the Kingdom.

But let King *John*'s Right to the Crown have been what it would, it is certain, that he could not take it upon him, until such time as this Great Council had both heard and allow'd his Title: and that this was in the nature of an Election, notwithstanding his Brother's Will, appears by that Account which *Roger Wendover* and *Matthew Paris* have given us of it; which tho *Hoveden* and other Writers have omitted, yet doth it not therefore follow, that this was all the pure Invention of *Roger* of *Wendover*, or *Matthew Paris*, since the former, living near that time, might write from the Relation of some that were then present; and as for the latter, I look upon him, tho a Monk, as a Man of too great Integrity to invent any thing of his own head. And I confess the Account that Archbishop *Hubert* gives, why he put King *John*'s Title rather upon Election than Succession, looks very suspicious; since the Archbishop must thereby have made himself a Knave and a Hypocrite, and seems also to contradict what *Matthew Paris* had before said, *viz.* "That all those that heard "his Speech, dared not so much as doubt of these things, knowing that the "Archbishop had not thus judged of this matter without cause." And therefore I grant that this part of the Relation, concerning the Archbishop's vindicating of himself for thus giving his Judgment, might be a Story commonly taken up, and being told to this Author, was by him inserted in his History at a time, when I grant the Crown of *England* began to be thought successive, by reason that King *Henry* III. had succeeded as the eldest Son of his Father, tho he was not for all that admitted without Election, as I shall prove by and by. But that King *John* was made King by Election, tho he claim'd it from his Brother by Succession, likewise appears from his own Charter, still to be seen at this day in the Archbishop's *Archives* at *Lambeth*; wherein he recites, that he came to the Crown, *Jure hereditario, & mediante tam Cleri quam Populi unanimi consensu & favore.* Where you see plainly that he derives his Title from the Consent and Favour of the Clergy and People, as well as his own Hereditary Right. Vid. Charta moderationis feodi magni sigilli.

M. Notwithstanding what you have now said, I cannot agree with you, that by these Words you have cited from this Charter, is to be understood any formal Election of the Clergy and People; but that this unanimous Consent mention'd in it, was rather their Acknowledgment of his Title, and Submission to him, than any thing else: for according to *Hoveden*'s Relation of his coming to the Crown (which I think the most exact extant) the whole Nation submitted, and swore Fealty to him against all Men, before he came over into *England*.

But as for his Son *Henry* III. it is much more plain that he succeeded by Succession, and not by Election, as being the eldest Son of the late King his Father, as appears by the Relation of his Coronation in *Matthew Westminster*, who tells us thus: *Henricus Johannis primogenitus in Regem inunctus & solemniter coronatus est.* Fol. 277. And tho from the Speech which was made to the Clergy and Nobility that were then at *Glocester* by the Earl *Marshall*, 'tis pretended, that *Henry* was elected; S. D. *p.* 13. yet I dare say, if any one do but impartially consider the Tenour of it, he will find that the Design of it was rather to persuade all those then present to return to their Duty, and acknowledge him for their King, whom God and Nature had design'd for that great Charge: for the Earl begins his Discourse to them thus, (as it is in *Knighton*) *Ecce Rex vester!* (which certainly could not then be true, if an Election was necessary to make him such) but amongst the rest of his Arguments, he urges this; *Hunc igitur libeat Regem* Col. 2426. *dicere, cui ipsum Regnum debetur*; *You ought to chuse him, to whom the Kingdom is due*: (which surely it can be to none, if it be not Hereditary.) And what puts all out of doubt, that the Kingdom was not then (and if not then, I am sure never since) Elective, is the Answer of *Hubert de Burgh* to *Lewis*, when he summon'd him to deliver up *Dover*-Castle to him, since his Master, for whose use and service he held it, was dead: but see his Answer, "If my old Master, "says he, be dead, he has left behind him Sons and Daughters to succeed him." A thing he never would have asserted, had he not thought there had been a Divine Right somewhere else than in the People.

F. Before I ſpeak any thing to King *Henry* the Third's Election, give me leave to reply to what you have ſaid againſt the expreſs Words of King *John*'s Charter; for if *Favor* and *Conſenſus* does not ſignify ſomewhat more than a bare Acknowledgment and Submiſſion, I underſtand neither *Engliſh* nor *Latin*. Nor is this any Anſwer to the expreſs Teſtimony of *Roger* of *Wendover* and *Matt. Paris* to the contrary. And as for *Roger Hoveden*, he does not ſay he was not elected, but only omits the manner of it, as divers other Hiſtorians do. So that (at the beſt) this is but a negative Argument; and yet that *Hoveden* himſelf did not look upon him as King even after the whole Nation had ſworn Fealty to him before his Coronation, may appear from this Paſſage a little before his coming over: *Willielmus Rex Scotorum miſit nuncios ad Johannem Ducem Normandiæ*, &c. where you ſee he calls him no more than Duke of *Normandy*.

But to come to the Election of his Son Prince *Henry*; if this be all you have to prove a Divine Right of Succeſſion in *Henry* III. I doubt it will do you but little ſervice; for according to your own Principles it muſt have been lodged ſomewhere elſe than in this Prince: for when King *John* his Father died, *Eleanor*, the Siſter of Duke *Arthur*, was alive, and died not till the 25th Year of King *Henry*'s Reign, a cloſe Priſoner in *Briſtol*-Caſtle, as *Matthew Paris* relates. So that it is apparent he could have no ſuch Divine Hereditary Right as you ſuppoſe; and therefore perhaps his Father, to ſtrengthen his Title, and to recommend him the more to the Peoples Favour, appointed him his Succeſſor by his laſt Teſtament: and *Matthew Paris*, and *Matthew Weſtminſter* tell us, that when King *John* died, *Henricum Primogenitum ſuum Regni conſtituit hæredem*. So that it ſeems there was then no ſuch plain Hereditary Right; for if it had, what need had there been of this Teſtament?

Mat. Paris, *f.* 574.

Mat. Paris, *f.* 288. Mat. Weſtm. *f.* 276.

But for all this Right, I do not find that this poor Princeſs *Eleanor* had any of the Biſhops or great Lords to take her part, but all the Diſpute then was at this great Convention at *Glouceſter*, whether they ſhould abjure Prince *Lewis*, whom moſt of them had before choſen for their Lord, and adhere to Prince *Henry*, there preſent before them, as *Matthew Paris* tells us; *Erat autem eâ tempeſtate inter Optimates Anglia fluctuatio maxima, cui ſe Regi committerent; Juvenine Henrico, an Domino Ludovico?* So that it ſeems, by the Relation our Hiſtorians give us of this matter, it was not from any great ſenſe that the Clergy and Nobility had of the Juſtneſs of Prince *Henry*'s Title, that made them agree to chuſe him King; but the Hatred they then bore to Prince *Lewis*, when they found he had broken his Contract with them, and put all the ſtrong places of the Kingdom into the hands of *Frenchmen*, and treated the *Engliſh* Nobility with Scorn and Contempt: and therefore no wonder if they prefer'd an innocent young Prince of their own Nation, who had never been guilty of his Father's Faults, before a Stranger, whoſe fraudulent Dealing with them they had found not to anſwer their Expectations. And therefore *Mat. Weſtminſter* tells us, that *omnes Nobiles Terræ in brevi ipſi juveni Regi Henrico, qui nihil culpæ verſus eos meruerat, fideliter adhæſerunt*.

P. 145.

But to prove farther, that this King came in by Election, and not by Succeſſion, appears by what our Hiſtorians relate concerning the manner of it. *Henry de Knyghton*, in his Chronicle, tells us, that on the Feaſt of St. *Simon* and *Jude*, *Henry*, Son of King *John*, *in Regem erigitur viribus, & induſtria Gualonis Papæ Legati*; which plainly ſhews that he was not King before: and I deſire no better an Authority than your own Author, *Matthew Weſtminſter*, who ſays, that he was *in Regem inunctus*, anointed to be King; which ſhews that he thought him not ſo before his Coronation. And tho I grant *Mat. Paris* makes the Earl *Marſhal* to begin his Speech with thoſe words, *Ecce Rex veſter!* as you relate them; yet this was no more than an Alluſion to that place in St. *John*, *Chap.* 19. *Behold your King!* it being uſual in thoſe days to begin their Speeches with a Text of Scripture. So that the Earl did not intend to be underſtood literally, for then he ſhould have in this Speech contradicted what he had ſaid before: for tho to prepoſſeſs their Minds, he ſays of the young Prince there preſent, *Behold your King!* yet it is plain, that how much ſoever he thought the Kingdom his Right, yet that it could not be conferred upon him without their choice; as appears by theſe words, which you your ſelf have made uſe of, *viz. You ought to chuſe him, to whom the Kingdom is due.* And it is evident by the

Col.

Aſſent

Aſſent which the whole Aſſembly gave to the Reaſons declared by him in this Speech, that it was their Choice alone that made him King, their Votes being given in theſe words, *Fiat Rex*; which had been altogether needleſs, had they looked upon him as King already. And therefore the Speech of *Hubert de Burgh*, which you mention, may very well be reconciled to this Hypotheſis, of ſuppoſing a Neceſſity of an Election and Coronation to confer a full and legal Right in thoſe times: for when he ſaid, *That the King, if dead, had yet left behind him Children who ought to ſucceed him*; this, if ſtrictly taken, is altogether falſe: for *Eleanor*, the true Heireſs of the Crown (according to your Rule of Succeſſion) was then alive: but, if taken in a limited ſenſe, is true, that is, the Children ought to ſucceed if the great Council of the Nation thought fit; without whoſe Conſent, tho they might have *Jus ad rem*, yet had they not *Jus in re*: this Election and Coronation being then looked upon, as Livery and Seiſin at this day is to an Eſtate in fee, without which, tho the Writings are ſealed and delivered, the Land will not paſs.

To conclude: I pray anſwer me that Queſtion I have ſo long put, tho without any Reply, *viz.* Why, before this Election and Coronation was perform'd, none of thoſe Princes that came to the Crown by your ſuppoſed Right of Succeſſion, are call'd by any higher Title than Dukes of *Normandy*, or Earls of *Poictou?* So that from what has been here ſaid, I think it plainly appears, that no leſs than ſeven of the eight Princes from your *William* the Conqueror (reckoning him for one) to King *Henry* III. have owed their Title to the Crown, not to any Right of Succeſſion, but either to the Election of the People alone, or elſe to the Will or Deſignation of the laſt King, confirm'd by the general Conſent of the People given thereunto; and without which it would not have been good, according to the antient Cuſtom of the *Engliſh Saxons* before your Conqueſt: where, beſides the Teſtament of the King deceaſed, there was alſo required the Conſent or Election of the great Council. So that you ſee here was no alteration made in the Form of our chuſing our Kings after your Conqueſt from what it was before, for no leſs than ſeven or eight Deſcents: And when you can anſwer this, I ſhall then come over to your Opinion.

M. In anſwer to your Queſtion, I ſhall not deny but that our Hiſtorians give all the Kings you mention no higher Titles than Dukes of *Normandy*, or Earls of *Poictou*, before their Coronations: which tho I ſuppoſe they might do from a fooliſh Superſtition of that Age, which made them fancy that none were properly to be called Kings until they had been anointed, and ſolemnly crown'd by a Biſhop; yet that they looked upon them as Kings indeed, appears in that they ordered and diſpoſed of all publick Affairs, conferred Offices and Biſhopricks, as if they were lawful Kings before your pretended Election, or the Ceremony of their Coronation; and alſo had Ambaſſadors ſent to them from foreign Princes, as appears from your own Quotation out of *Hoveden*, of thoſe that were ſent by the King of *Scots* to King *John* before he was crowned; tho it is true he there ſtiles him no more than Duke of *Normandy*. And this alſo may further appear by that Paſſage I have cited out of the ſame Author, that King *Richard* had Fealty ſworn to him as King of *England* by all the Freemen of *England* before he was crowned, and you your ſelf acknowledge the ſame Oath to be taken by the ſame Perſons to King *John* before he came over to take the Crown.

And laſtly, to make it yet plainer that there was no Vacancy or Interregnum in all theſe Succeſſions you have mention'd, conſult what Chronologer you pleaſe, or look into the moſt antient Tables of the Succeſſion of our Kings of *England*, or into our old printed Statutes or Law-Books, and you will ſtill find the Reign of the ſucceeding Prince to commence from the Death of his next Predeceſſor, without any Vacancy or Interregnum between. And theſe I think to be a great deal ſurer Marks of their ſucceeding to their Royal Dignity, by a pretence at leaſt of a Right of Inheritance from the Father or Brother, rather than this Fancy of yours that you lay ſo much ſtreſs upon, That becauſe of their not being ſtiled Kings by our Hiſtorians till their pretended Election and Coronation was over, they were not ſo indeed. And I hope this may ſerve to ſatisfy this mighty Objection.

F. I muſt beg your pardon if I ſtill declare my ſelf not ſatisfied with your Anſwers: for tho I grant, that if this Argument of the Hiſtorians not ſtiling them

them Kings, had ſtood ſingle, without any thing elſe to ſupport it, your Anſwers might have ſignified ſomething; yet if you pleaſe to conſider it, you will find that none of theſe Princes (taking in *William* your Conqueror) claimed, as your ſelf muſt acknowledge, by any Hereditary Right, but by the Teſtament of the deceaſed Predeceſſor; and if ſo, where was your ſettled Right of Succeſſion by Right of Blood? Secondly, it is likewiſe as plain, that theſe four were never admitted or acted in *England* as lawful Kings, till thoſe Teſtaments were confirm'd by the Election of the great Council, before whom they declared their Rights: and till this was done, how the Throne could be otherwiſe than vacant, I cannot conceive. But as for two of them (whom you call downright Uſurpers) *viz. Henry* I. and King *Stephen*, it is certain they could have no colour of a Title till their Elections; and if not till then, and that neither your next Heir of the Crown, nor yet they themſelves took upon them the Title of Kings, was not this a Vacancy of the Throne in the mean time? ſuppoſe that time to have been but for the ſpace of three or four days, as it was after the Death of King *William Ruſus*.

In the next place pray conſider, that upon the Death of every one of theſe Princes, we do not find the great Council of the Kingdom, which ſtill aſſembled to elect the Succeſſor, was ever call'd in their Names, but met by their own inherent Authority; for how could they be ſummon'd by the King before he took that Title upon him, which, as your ſelf are forced to acknowledge, he never did till after his Coronation?

Laſtly, pray remember farther, that whoever was thus elected and confirm'd by the great Council, whether he was next Heir by Blood or not, was always looked upon as lawful King, and has always paſſed for ſuch in all our Chronicles and Laws, and not thoſe that claimed as the right Heirs by Blood. And if this be not ſufficient to prove that theſe Princes had no true and compleat Right to the Crown till this Election was paſt, I deſire you would ſhew me my Miſtake.

Theſe things premis'd, I think it will be very eaſy to reply to every one of thoſe Anſwers you pretend to have made to my Query: Therefore as to your firſt, That they were really Kings before their Election or Coronation, becauſe they ordered and diſpoſed of all publick Affairs, I do not deny but that ſome of them, who ſucceeded either as Heirs by Teſtament, or by Right of Blood, might do many publick Acts, by reaſon that they looked upon themſelves as Heirs apparent to the Kingdom, and whom the great Council, I grant, could not without high Injuſtice ſet aſide: and upon this account they might alſo receive Ambaſſadors from foreign Princes, in Affairs relating to Peace or War, that they might know how to deal with them, or what to expect from them after they were ſettled in the Throne: yet that they ſent not to them by the Title of Kings, appears by that Paſſage I cited out of *Hoveden*. But I defy you to ſhew me any one Inſtance that any of theſe Princes above-mention'd ever took upon them to exerciſe any of thoſe Prerogatives of Sovereign Power; ſuch as making War or Peace, enacting Laws, coining of Mony, before their Election and Coronation; which tho in ſome of them was done both at once, yet in others it appears plainly to have been at different times, and not upon the ſame day, as it happen'd in the caſe of *Henry* I. whoſe Election was at *Wincheſter* upon *Saturday*, and his Coronation was not till the next day: as alſo that of *Henry* III. whoſe Election was upon St. *Simon* and *Jude*'s day, but his Coronation upon the day after.

But as for your next Reply, which I grant to have been the ſtrongeſt you have made, that King *Richard* I. and King *John* had both of them Homage and Fealty ſworn to them as Kings, by all the Freemen of *England*, before they were crowned: This were a material Argument if it were made out, as I think it cannot be; for in the firſt place, the bare ſwearing of Homage and Fealty to a Prince doth not make him immediately King, tho I grant it might give him in that Age a Right to be looked upon as Heir apparent to the Crown. Thus *Henry* I. made all the Lords and great Men of *England* to ſwear Homage and Fealty to Prince *William*, his Son; and ſo after his being drowned, to the Empreſs *Maud*, his Daughter, which was the true reaſon why ſhe looked upon her ſelf afterwards as Heireſs to the Crown. So likewiſe King *Stephen*, a little before his Death (at the great Council I have mention'd) cauſed all the great

Men

Men of the Kingdom to ſwear Homage and Fealty to *Henry* Duke of *Anjou*, as his immediate Succeſſor. So that you ſee this ſwearing of Fealty was in thoſe days often perform'd before the Perſons that received it were Kings indeed; and ſo I believe it was done in both thoſe Inſtances you now give me: for tho I grant that *Hoveden* (as you cite him) relates that Homage was made, and Fealty ſworn to *Richard* I. by the Title of King, yet it is very much to be doubted whether this was not only by a *Prolepſis*, or perhaps a ſlip of the Pen in this Author, ſince he writ this Hiſtory long after King *Richard*'s Death; and therefore unleſs we had the very words of this Oath, there is no certain Concluſion to be drawn from thence. And I think we may as well credit the Chronicle of Abbot *Brompton*, who likewiſe lived about the ſame time, and recites all this Affair almoſt in the ſame words with thoſe in *Hoveden*; but there the Oath doth not run exactly in the ſame words as in this Author, but thus: *Quod unuſquiſque liberorum hominum totius Regni juraret quod fidem portaret Domino Richardo, Domino Angliæ, filio Domini Regis Henrici, &c. ſicut legio Domino ſuo contra omnes mortales.* Where you ſee the Oath is not made to King *Richard* as King, but only as Lord of *England*; and that there is a great deal of difference between thoſe two Titles, not only in Name, but in Subſtance, I have already proved, when I ſpoke of the Empreſs *Maud*'s ſtiling her ſelf *Domina*, and not *Regina Anglorum*; tho ſhe had Homage rendred, and Fealty ſworn to her, not only in her Father's life-time, but alſo after her coming over again into *England*, in the Reign of King *Stephen*, by all that own'd her Title. And that *Hoveden* himſelf meant no more than this, appears by that Paſſage I have already taken notice of, *viz.* That *Hubert*, Archbiſhop of *Canterbury*, and *William*, the Earl *Marſhal*, being ſent over to keep the Peace, made all the Men of the Kingdom, as well of Cities as Boroughs, with the Earls, Barons and Freeholders, *Jurare fidelitatem & pacem Johanni Normannorum duci, filio Henrici Regis, filii Matildis Imperatricis, contra omnes homines:* where you ſee the Oath is taken to him only as Duke of *Normandy*, and not as King at all; and therefore you are miſtaken to ſay that *Hoveden* mentions the like Oath to be taken to Duke *John*, as it was before to King *Richard*. p. 793.

But I come now to anſwer your laſt Argument, whereby you would prove that there was no Vacancy or Interregnum in this Age; which is, becauſe that our Chronicles and Tables of Succeſſion do ſtill begin the Reign of each King, from the day of the Deceaſe of his Predeceſſor, without any Vacancy or Interregnum between them. To which I reply, That none of our antient Chronicles or Hiſtorians reckon thus, as I know of, but rather acknowledge a Vacancy of the Throne to have been between each Succeſſion; and as for the Tables of the Succeſſion of our Kings, when you can ſhew me one more antient than the time from which I grant the Crown of *England* began to be looked upon as a Succeſſive, and not an Elective Kingdom, I ſhall be of your opinion. But admit it were ſo, ſince the Succeſſion to the Crown had been for the moſt part mixed, partly Elective, and partly Hereditary, our Kings might, to maintain the Honour of their Title, ſtill reckon their coming to the Crown immediately from the Death of the laſt Predeceſſor, tho there have been oftentimes ſome Days and Weeks between the one and the other, as I have now proved, and ſhall prove further by and by; which being but ſmall Fractions of Time, are not taken notice of in the whole Account, which may be notwithſtanding very agreeable to Law; for both my Lords *Dyer* and *Anderſon* in their Reports do agree, "That "the King, who is Heir or Succeſſor, may write and begin his Reign the ſame "day that his Progenitor or Predeceſſor dies."

M. It will be to no purpoſe to diſpute this Point with you any longer, ſince I muſt confeſs that there were ſo many Uſurpations in the Succeſſion of moſt of thoſe firſt Kings after the Conqueſt, that it is a difficult matter to prove any ſettled Rule of Succeſſion to have been then obſerv'd in *England*; and therefore I only deſire you to take notice, that tho it is true, King *Henry* III. was an Uſurper for the firſt twenty five Years of his Reign, yet for all the reſt of it, which was near thirty more, he was a true and lawful Prince: for *Eleanor* his Couſin being dead in Priſon without Iſſue, and there being no more of that Line left, her Right wholly devolved upon King *Henry*, and he and his Children are to be from henceforth reckon'd to have a true Hereditary Right to the Crown without any Competitors.

And that this was ſo, will plainly appear from the Teſtament of King *Henry* III. (a Copy of which I have by me) where, tho he bequeaths a great many of his Jewels to the Queen, and a great deal of Mony to charitable Uſes, yet for this Kingdom, and other Territories in *France* and *Ireland*, he makes no Bequeſt of them at all, either to Prince *Edward* his eldeſt, or to *Edmund* his youngeſt Son, tho his Father King *John* had bequeathed the Kingdom to him by his Will (as you have already ſhewed:) and what could be the reaſon of this? but that there being now no Title left to conteſt with his Son, there was no need of it. And therefore tho Prince *Edward* was abſent in the *Holy Land* when his Father died, yet a great Council being call'd in his Name at *London*, he was there only recognized and acknowledged to be their natural Liege Lord, and Lawful Succeſſor to his Father's Throne. Pray read the words as they are in *Walſingham*'s Life of this King; *Edwardum abſentem Dominum ſuum Legium recognoverunt, paternique ſucceſſorem honoris ordinaverunt.* We meet not here with any thing like Election, which no doubt we ſhould not fail to do, if there had been any ſuch thing practiſed.

P. 49.

So likewiſe upon this King's Death, his Son King *Edward* II. by the like Right ſucceeded as Heir to his Father; and tho this Prince, by ſuffering himſelf to be too much guided by his Minions, fell at length into ſuch irregular Courſes, as procured him the Hatred and Ill-will of his Subjects to that degree, that by the diſloyal and ambitious Practices of his laſcivious Queen, he being made a Priſoner, a Parliament was call'd in his Name, who took upon them to depoſe him for his Miſgovernment, contrary to all Law and Right: and tho his Son Prince *Edward* had hitherto join'd with his Mother againſt his Father, yet is he herein ſo far to be commended, that tho the Crown was offered him by Election of the Great Council, yet the ſame Author tells us, he ſwore that without his Father's Conſent he would never accept it. Whereupon divers Meſſengers or Delegates being diſpatched from the Parliament to the King, then Priſoner at *Kenelworth*-Caſtle, who telling him what had been done and concluded of at *London*, required him to reſign his Crown, and permit his Son to reign in his ſtead; which with ſome reluctance he at laſt agreed to: and thereupon Prince *Edward* took the Crown, not by Election, as you ſet forth, but by the Ceſſion and Reſignation of his Father, as appears by the account which this King gave of it to the Sheriffs of all the Counties of *England* within a few days after his taking upon him the Crown; which Writ or Letter is ſtill to be ſeen among the Rolls in the Tower, and is alſo publiſhed in *Walſingham* as a Proclamation; which becauſe it will give very great light in this matter, I pray now read it at length: *Rex, Vicecom. Ebor. Salutem; Quia Dominus Edwardus nuper Rex Anglia pater noſter de communi conſilio & aſſenſu Prælatorum, Com. Baron. & alior. Magnat. necnon Communicat. totius Regni prædict. ſpontanea voluntate ſe amovit a Regimine dicti Regni volens & concedens, quod nos tanquam ipſius primogenitus & hæres Regni gubernationem & regimen aſſumamus, noſque ipſius patris noſtri beneplacito in hac parte de conſilio & aviſamento Prælator. Com. Baron. Magnat. & Communicat. prædict. annuentes gubernacula ſuſcepimus dicti Regni; & fidelitates & Homagia ipſorum Prælator. & Magnat. recepimus, ut eſt moris, teſte Rege apud Weſtmonaſt. 29 Jan.* So that you here ſee this King takes no notice of the Depoſition of his Father, or the Election of himſelf, but only that by the common Counſel and Aſſent of the Prelates, Earls, Barons, *&c.* the King his Father had, by his own free Will, removed himſelf from the Government of the Kingdom, and that therefore he had, by the Good-will of his ſaid Father, and by the Counſel and Advice of the ſaid Prelates, Earls, *&c.* taken the Government of the ſaid Kingdom upon him.

B. H. S. *p.* 381. Rot. Cl. 1. E. 3. P. 1. M. 28. *Part of it is alſo in* Walſingham, *f.* 126. M. 50.

But King *Edward* III. being dead, his Grandſon *Richard* II. ſucceeded him, having been before recognized by Act of Parliament, as Heir apparent to the Crown in his Grandfather's life-time, immediately upon the Death of his Father *Edward* the Black Prince; ſo that he ſucceeded to the Crown, tho an Infant, and had great and powerful Uncles then alive: but by his ruling too arbitrarily, and being too much governed by Flatterers, he became hated of his Subjects, and thereupon gave occaſion to *Henry* Duke of *Lancaſter* (whom he had before baniſhed) to come over and take the Kingdom from him without ſtriking a ſtroke; who having taken the King Priſoner, call'd a Parliament in his Name, who took upon them moſt unjuſtly to depoſe King *Richard*,

chard, tho 'tis true he alſo made a ſolemn Reſignation of it by his own ſeeming Conſent: but it is certain it was forced from him, for fear of worſe Uſage if he refuſed it.

F. Pray give me leave to anſwer what you have now ſaid, before you proceed farther in this Hiſtory of the Succeſſion. In the firſt place, I ſhall not deny but that from the Reign of King *Edward* I. the Crown has been always claimed (tho not conſtantly enjoy'd) by Right of Blood; yet that the Cuſtom was otherwiſe before, I think the Inſtances I have given from the time of your Conqueſt, are more than ſufficient: it is likewiſe as certain that this Succeſſion, by Right of Blood, was never ſettled by any poſitive Law, and therefore muſt be purely derived from that tacit Conſent of the People called Cuſtom. Secondly, That the two Houſes of Parliament have often, notwithſtanding this Claim, placed or fixed the Crown upon the Heads of thoſe Princes, whom they very well knew could have no Hereditary Right to it. Thirdly, That ſuch Princes have been always obey'd, and taken for Lawful Kings, all their Laws ſtanding good at this day, without any Confirmation by their Succeſſors, tho they pretended to a better Title. Now if I prove every one of theſe three Propoſitions, I think the caſe will be very plain, that tho the Crown has been claimed and often enjoyed by Right of Blood, yet hath it been held near as often otherwiſe ſince that time: ſo that the Succeſſion to it hath been ſtill declared to be under the Direction and Limitation of the preſent King and Parliament.

This being premiſed, I ſhall proceed, in the next place, to anſwer what you have ſaid concerning King *Edward* the Firſt's being only recognized, and not elected King by the Parliament. It is plain from this Hiſtory, that the Great Council ſtill maintain'd their antient Right of aſſembling upon the Death of the King, and of judging who ſhould be his Succeſſor, and that without any Summons from him: which will ſerve to juſtify (as do all the other Inſtances aforegoing) that the late Convention meeting, and ſettling the Crown without any Writs or Authority derived from King *James*, was no new thing; but that they have therein done no more than what hath been antiently practiſed in like caſes: and tho ('tis true) the word in *Walſingham* is *recognoverunt*, yet there are alſo other words which ſeem to intimate, that it was then in the power of the Great Council whom to declare for lawful Succeſſor. The words are, *Paternique Succeſſorem honoris ordinaverunt*; that is, they ordain'd or decreed him Succeſſor of his Father's Dignity: which ſure is ſomewhat more than a bare Declaration of an undoubted precedent Right. And what Power the Great Council was then looked upon to have in the ordering of this Kingdom, appears by that Writ of *Dedimus*, for all Mens taking the Oaths of Allegiance in the Country; which is ſtill to be ſeen in the cloſe Rolls, and begins thus: *Quia defuncto jam celebris memoriæ Domino Henrico patre noſtro, ad nos Regni Gubernaculum ſucceſſione Hæreditaria Procerum Regni voluntate & fidelitate nobis præſtita ſit devolutum, &c.* Where, beſides the Hereditary Succeſſion, the Goodwill and Fidelity of the Great Men is reckon'd as one of the means by which the Kingdom came to him. And that this Courſe was alſo obſerved upon the Acceſſion of his Son *Edward* II. to the Crown, ſeems likewiſe as evident from the ſame Author, who tells us in the beginning of the Life of this Prince, that he ſucceeded his Father King *Edward*, *non tam jure Hæreditario, quam unanimo conſenſu Procerum & Magnatum:* Which Obſervation had been altogether needleſs, had an unalterable Hereditary Right to the Crown been then ſettled.

But as to what you ſay of King *Edward* the Third's Right, whilſt his Father was living, that it was wholly due to his Reſignation, tho the place I cited out of *Walſingham* be expreſs in this point; yet againſt this you urge a Writ or Declaration, as alſo a Proclamation of this King's, wherein he thus ſets forth his Title, *viz.* "That by the voluntary Reſignation of King *Ed-*
"*ward* his Father, and by the Counſel and Advice of the Prelates, Earls, and
"Barons, *&c.* he had taken upon him the Government of the Kingdom:" and conſequently that ſucceeding immediately upon his ſaid Father's Reſignation, there could be no Vacancy of the Throne. To which I anſwer, that I do not deny that after this King was once ſettled in the Throne, he might think it moſt to his Honour, and the Independency of his Title, to rely wholly upon his Right of Succeſſion as eldeſt Son and Heir, without taking

any notice of the Parliament's Election of him; tho this be also covertly expressed in these words, which are in this Writ and Proclamation, *viz.* "That "consenting to his said Father's pleasure, he had taken the Government *de* "*consilio & advisamento Prælator. Com. Baron. Magnat. & Communitat. prædict.*" which tho you translate by the Counsel and Advice of the Prelates, Earls, Barons, and Commonalty, yet I do suppose that by *Consilio* is here meant not Counsel, but Consent, as I have already proved the word *Consilium* often signifies in our antient Statutes; for otherwise if this word must here signify Counsel, it would be a plain Tautology, for Advice and Counsel are the same thing.

But to shew you also that there must needs have been a Vacancy of the Throne, either upon the Deposition or Resignation of *Edward* II. (take it which way you will) it appears from matter of Fact; for it is plain, that when Prince *Edward* refused the Crown upon the Parliament's electing him, unless his Father would willingly resign it, he did at their Request resign his Title to it, by certain Commissioners sent down to him to *Kenelworth*-Castle to take it. Now that Place being at least two days Journy from *London*, it is certain there must be as many days Vacancy of the Throne, if not more, before the said Commissioners could get to *London*, and that Prince *Edward* had agreed to take the Crown upon his Father's Resignation; for till then the Throne was vacant, since till the Prince had declared his Assent to take it, he might have chosen whether he would have accepted it or not, as not being satisfied whether his Father's Resignation was voluntary, and not by constraint. Now if there were a Vacancy of the Throne in this case, tho but for two or three days, it serves to prove the matter in question, as well as if it had been for two years.

So likewise let the Reign of King *Henry* IV. begin either from the Resignation or Deposition of King *Richard* II. (take it which way you please) there must have been a Vacancy of the Throne, as appears by the Parliament-Roll still extant: For it is there plain, that after the Instruments of King *Richard*'s Resignation and Deposition were solemnly read, the Throne continued void for some space, till such time as *Henry* Duke of *Lancaster* stood up and made his Claim to it, in that form of words which stands to this day to be seen upon the Parliament-Roll; and that the Archbishop of *Canterbury*, taking the Duke by the hand, had led him to the Throne, and placed him thereon.

M. I cannot deny, but as you have set forth the matter of Fact, there must have been a Vacancy of the Throne in these two Cases; but since the Depositions of both these Kings were contrary to Law, and their Resignations extorted from them by constraint whilst they were in Prison, they are neither of them looked upon as valid, or to be urged as Precedents in future times. But however the Throne might seem then to be vacant in point of Fact, yet in Law it was otherwise; for *Edmund* Earl of *March* ought to have immediately succeeded upon the Death or Resignation of King *Richard*, as being lineally descended from *Philippa*, only Daughter and Heir to *Lionel* Duke of *Clarence*, third Son of King *Edward* III.

But to let you see that *Henry* Duke of *Lancaster* (as much an Usurper as he was) was sensible that the Crown could not be then enjoyed by Election, but by Right of Blood; and that the Parliament also thought themselves in Duty bound to submit to him, to whom by Right of Blood the Crown did belong, will appear from this Duke's manner of laying Claim thereunto; which since you have not particularly mentioned, I will: For no sooner was the Throne vacant, by the pretended voluntary Resignation of King *Richard*, but Duke *Henry*, having fortified himself with the sign of the Cross, stood up, and made his Demand of the Crown in his Mother-Tongue, in this form of words (as I have extracted them out of the Parliament-Roll.)

Vid. Rot. Parl. 10 Hen. 4. 20.

In the Name of the Father, Son, and Holy Ghost.

I Henry of Lancaster challenge this Reawme of Inglonde, and the Corone, with all the Members and Appurtenances; also that I am descendit by Right Line of the Blode, comyng fro the gude Lord King Henry the Third: And thorghe that Right, that God of his Grace hath sent me, with the help of my Kyn,

kyn, and of my Friends to recover it: The which Realme was in poynt to be undon for default of Governance and undoyng of the gude Laws.

"And after which Challenge and Claim (ſays the Record, which I render "out of *Latin*) as well the Lords Spiritual as Temporal, and all the States "there preſent, being all ſeverally interrogated, what they thought of the "aforeſaid Challenge and Claim; the above-named States, with all the Com-"monalty, without any Difficulty or Delay, unanimouſly agreed, that the "aforeſaid Duke ſhould reign over them." Where you may ſee, that this whole Parliament admits the Duke's Claim for good, without proceeding to any formal Election of him.

And by virtue of this ſham Title, and claiming as Heir of Earl *Edmund*, (ſirnamed Crouch-back) Brother to King *Edward* I. (whom he falſly pretended to have been the eldeſt Son to King *Henry* III. and put by for his Deformity) not only *Henry* IV. but alſo his Son *Henry* V. and his Grandſon *Henry* VI. (tho Uſurpers) did ſucceed as right Heirs to the Crown, till the 39th year of *Henry* VI. when *Richard* Duke of *York* did in a full Parliament lay Claim thereunto in right of his Mother, being only Siſter and Heir of *Edmund* Earl of *March*. And becauſe the Judgment of the Parliament in this Caſe is very remarkable, pray read this part of it, as it ſtands recorded in the Parliament-Roll: "Where upon conſideration of the Anſwer, and Claim of the Duke of *York*, Vid. Rot. Parl. "it was concluded and agreed by all the Lords, that his Title could not be 39 Hen. 6. "defeated; and therefore for eſchewing the great Inconveniences that may en-M. 18. "ſue, a Mean was found to ſave the King's Honour and Eſtate, and to ap-"peaſe the ſaid Duke if he would; which was, that the King (*viz. Henry* "VI.) ſhould enjoy the Crown during Life, the Duke to be declared the true "Heir, and to poſſeſs it after his Death, *&c.*" And note, that all this was done after a ſolemn Hearing of all that could be ſaid on both ſides.

F. I confeſs the matter of Fact, concerning King *Henry* the IVth's coming to the Crown, is truly recited by you from the Parliament-Roll; yet for all that it doth not follow, that the Parliament allowed this King's feigned and falſe Claim to be good, by their not contradicting it. For tho the Record ſays, "That upon the hearing of this Challenge or Claim, all the Eſtates "of the Kingdom being then asked their Judgments ſeverally, declared, "without any Difficulty or Delay, and unanimouſly agreed that the ſaid "Duke ſhould reign over them:" Yet conſidering the Duke's great Power, it was not ſafe telling him to his face, that he had no true Right by Inheritance; therefore they only declared in general words, without expreſly denying or affirming his ſaid Claim, *That he ſhould reign over them*: which words do rather amount to an Election of him to be King, without declaring what Title he had to be ſo. And this they thought they might very well juſtify, not only for his having delivered them from the Tyranny of King *Richard*, but alſo becauſe they then looked upon it as their Right, not only to depoſe the King in caſe of an apparent Violation of the fundamental Laws of the Kingdom, but alſo to place in his ſtead any of the Blood Royal, tho not next Heir by Blood; according to the Meſſage the whole Parliament had formerly ſent to King *Richard*, in the beginning of his Reign, by the Archbiſhop of H. Knyghton, *Canterbury*, and his Uncle the Duke of *Gloceſter*, which I gave you at our ninth col. 2681. Meeting (as I remember.) And pray take notice the words were, *Et propinquiorem aliquem de ſtirpe Regia, loco ejus in Regni ſolio ſublimare*; where obſerve, that the words were not the next of Blood, but ſome near Kinſman of the Blood Royal.

And tho it is true that King *Henry* V. and VI. might both ſeem to ſucceed to the Crown by Right of Blood, yet I do rather attribute their Right of Succeſſion to an Act of Parliament made in the ſeventh, and confirmed in Vid. 7 Hen. 4. the eighth year of *Henry* IV. whereby the Crown was entailed upon all his Sons cap. 2. by name, and the right Heirs of their Bodies; by virtue of which Settlement, both *Henry* V. and VI. ſucceeded thereunto. For if he had thought his own feigned Hereditary Title to have been ſufficient, he would never have troubled himſelf to have procured the Crown to be ſettled upon himſelf and his Children by Act of Parliament.

M. All

M. All this ſignifies nothing; for I have already ſufficiently proved, that in the 39th year of *Henry* VI. upon a ſolemn hearing before the Parliament of the Claim of *Richard* Duke of *York* to the Crown, the ſaid Act was ſet aſide; and it was there expreſly declared, "That the ſaid Duke's Title could "no ways be defeated." And this Agreement is ſtill on Record, between *Henry*, the then Poſſeſſor of the Crown, and the ſaid Duke (whoſe Right it was) and the Judgment of the Parliament was then given in behalf of Proximity of Blood, as to have always been the Foundation and Ground of Succeſſion to the Crown of *England*, and of taking it from the Son of *Henry* VI. and reſtoring it to the Duke of *York* and his Iſſue as right Heirs thereof: as appears by the Title and Pedegree of the ſaid Duke, ſet down at large in the firſt Article of this Agreement confirmed by Parliament; that is, by King *Henry* VI. himſelf, who was then King *de Facto*, tho not *de Jure*.

B. H. S. *pag.* 386.

F. I will not deny the matter of Fact to be as you have ſet forth; yet if you will but pleaſe to conſider the time when this Declaration and Agreement was obtained, and the manner how it was done, you will quickly find, that it was rather got by Force and Conſtraint upon that poor Prince *Henry* VI. than by any real Right the Duke of *York* had to the Crown, after its being ſettled for three Deſcents in the Houſe of *Lancaſter*.

For the proof of which I deſire you, in the firſt place, to take notice, that at this time the whole Kingdom was under general Diſcontent, not only for the loſs of all our Conqueſts in *France*, but alſo for the great Miſmanagement of Affairs at home, by reaſon of the exorbitant power of the Queen, and her two Favourites, the Dukes of *Somerſet* and *Suffolk*, who made the King a mere Cypher, and had, without his Conſent, made away *Humphry* Duke of *Gloceſter* (the King's only Uncle then living) contrary to Law. So that Affairs being in this ill Poſture, it was very eaſy for the Duke of *York* and the Earl of *Warwick* to procure a ſufficient Intereſt in the Nobility and great Men of the Kingdom, to raiſe an Army, on pretence at firſt only of reforming the Grievances of the Kingdom, and bringing the ſaid Dukes to Juſtice; the Iſſue of which War was, that the Duke not being ſtrong enough at firſt to oppoſe the King's Forces, was forced to ſurrender himſelf; and to obtain his Pardon, took a ſolemn Oath never to rebel againſt the King again. But being afterwards attainted at a Parliament held at *Coventry* for new Conſpiracies, he then again rebelled, together with the Earl of *Warwick*: and then King *Henry* being carried to head his Army, was by the Duke of *York* taken Priſoner in the Battle near *Northampton*; and being thence by him brought up to *London*, a Parliament was called in the King's Name (tho without his Conſent) wherein the Duke of *York* had the Confidence to ſeat himſelf in the Royal Throne, and to make that Challenge of the Crown you have recited. And under how great a Terror all the Friends and Servants of this poor Prince were at that time, appears plainly from this, that neither the King's Attorny, nor any of his Council durſt undertake to plead his Cauſe before the Parliament, nor yet would the Judges give their Opinions in a matter of ſuch great moment; but they all anſwered, "That this Matter paſſed the Learning of the Juſtices, and alſo "that they durſt not enter into any Communication concerning this Matter, "and beſought all the Lords to have them excuſed for giving any Advice or "Counſel therein; but the Lords would not excuſe them: and therefore, by "their Advice and Aſſiſtance, it was concluded by all the Lords, that the Ar-"ticles following ſhould be objected againſt the Claim and Title of the Duke." So that you ſee from the Record it ſelf, that the Judges were with much ado prevailed with to object any thing againſt the Duke's Title.

Vid. Grafton's *Chronicle.*

Vid. *Record*, 39 H. 6. n. 11, 12, 13.

Therefore conſidering the Contempt the King's Perſon was then under by reaſon of his Weakneſs, and the great Hatred and Wearineſs the Nation had then of the evil Government of the Queen and her Favourites, it was no more difficult for the Duke of *York* to procure this Judgment in Parliament in favour of his Title, than that *Henry* IV. ſhould, after he had put *Richard* II. in Priſon, get him depoſed, and make his own Title to be allowed for good. And certainly if it were Rebellion for the Duke of *Lancaſter* to take up Arms againſt King *Richard* II. and to depoſe him, I cannot ſee why (according to your own Principles) it ſhould not be the ſame Crime in the Duke of *York* to take up Arms againſt King *Henry* VI. to whom he had more than once ſworn Faith

and

and Allegiance; and having taken him Priſoner, to call a Parliament without his Conſent, whereby himſelf was declared Protector of the Kingdom, and the Son of King *Henry* diſinherited after a quiet poſſeſſion in three Deſcents, during the ſpace of above ſixty years: which if it will not give a thorow Settlement, after two Acts of Parliament to confirm it, I know not what can.

M. I confeſs you have given me a more exact account of this Tranſaction than ever I yet had; and I ſhould very much incline to be of your Opinion, were it not that I am ſatisfied that our Kings have a Right to the Crown by God's Law as well as Man's, as alſo by the Law of Nature. And that more than one Parliament have been of my Opinion in this Matter, I ſhall ſhew you from ſeveral Statutes and Declarations of Parliament; which tho not printed, are yet to be ſeen at this day upon the Parliament-Rolls. For after that *Henry* VI. or rather his Queen for him, had broken the aforeſaid ſolemn Agreement made between this King and Duke in Parliament, whereby it was accorded, that if King *Henry* made war again upon the Duke of *York*, he ſhould then forfeit his preſent Right to the Kingdom during Life; Queen *Margaret*, and her Son Prince *Edward*, who would not ſubmit to this Agreement, renewed the War, and fighting another Battel at *Wakefield*, the ſaid Duke was ſlain. But tho he did not live to enjoy his Right, yet his Son *Edward* Earl of *March* again recovered it; and having in the ſecond Battle of *St. Albans* taken King *Henry* Priſoner, triumphantly marching to *London*, he there declared himſelf King. And having immediately called a Parliament, it was therein declared, Vid. Grafton's *Chronicle.*

" That all the Proceedings againſt King *Richard* II. are repealed, and the tak- *Parl. Rolls,*
" ing him Priſoner by *Henry* Earl of *Derby* was declared againſt his Faith 1 Edw. 4. n. 8,
" and Allegiance, and that with Violence he had uſurped upon the Royal Power 9, 10, 11, 12,
" and Dignity, *&c.* and that he had by cruel Tyranny murdered and deſtroyed 13.
" the ſaid King *Richard*, his Liege and Sovereign Lord, againſt God's Law, B. H. S. *p.* 388.
" and his own Oath of Allegiance."

And then they proceed further to declare in theſe words: " That the Com- Ibid.
" mons of this preſent Parliament having ſufficient and evident Knowledg of
" the ſaid unrightwiſe Uſurpation and Intruſion by the ſaid *Henry*, late Earl of
" *Derby*, upon the ſaid Crown of *England*; knowing alſo certainly, without
" Doubt and Ambiguity, the Right and Title of our ſaid Sovereign Lord (*viz.*
" King *Edward* IV.) thereunto true, and that by God's Law, Man's Law, and
" the Law of Nature, he, and none other, is and ought to be their true,
" rightwiſe, and natural Liege and Sovereign Lord, and that he was in Right
" from the Death of the ſaid noble and famous Prince his Father, very juſt
" King of the ſaid Realm of *England*, and will for ever take, accept, and re-
" pute the ſaid King *Edward* IV. their Sovereign and Liege Lord, and him
" and his Heirs to be Kings of *England*, and none other, according to the
" ſaid Right and Title.

" And that the ſame *Henry* unrightwiſely, againſt Law, Conſcience, and the Ibid. *p.* 389.
" Cuſtoms of the ſaid Realm of *England*, uſurped upon the ſaid Crown; and
" that he, and alſo *Henry*, late called King *Henry* V. his Son, and *Henry*, late
" called *Henry* VI. his Son, occupied the Realm of *England* and Lordſhip of
" *Ireland*, and exerciſed the Governance thereof by Unrightwiſe, Intruſion,
" Uſurpation, and no otherwiſe: That the Amotion of *Henry*, late called
" King *Henry* VI. from the Exerciſe, Occupation, Uſurpation, Intruſion,
" Reign and Governance of the ſaid Realm and Lordſhip, done by our Sove-
" reign Lord King *Edward* IV. was and is rightwiſe, lawful, according to the
" Laws and Cuſtoms of the ſaid Realm, and ſo ought to be taken, holden,
" reputed and accepted."

I have been the larger on this Point, becauſe it is a full and free Declaration of the whole Parliament, not only againſt all paſt as well as future Parliaments having any thing to do in the Diſpoſal of the Crown, but is alſo as expreſs a Declaration as words can make, againſt any Vacancy of the Throne upon the Death of the Predeceſſor; and therefore I hope you will pardon me, if I have been a little too tedious in reciting theſe Records.

F. I cannot blame you for being very exact in this Point, becauſe the whole ſtrength of your Cauſe depends upon it: But yet I doubt not but to ſhew you, that this Parliament was as much awed by King *Edward*'s Power, being now Conqueror, as ever thoſe Parliaments were that depoſed *Edward* and *Richard*

the

the Second; for you your ſelf have ſufficiently ſet forth the manner of it, that it was not till after a great Victory obtained againſt King *Henry* VI. And I never found, in all my reading, that a victorious Prince ever wanted power enough to get a Parliament called to ſettle himſelf in the Throne, and declare his Competitor an Uſurper, as I ſhall ſhew you more fully by and by. But this Act of Parliament, which thus poſitively declares *Edward* IV. to be their Sovereign Lord, by God's Law, Man's Law, and the Law of Nature, I think can no ways conſiſt either with Scripture, Reaſon, or Matter of Fact. For, in the firſt place, I think I have ſufficiently proved, that there is no Divine Right of Succeſſion for the Heirs of Crowns, any more than of other Inheritances, either by the Law of God, or that of Nature: and as for Man's Law, I think I have here alſo proved, that the Succeſſion to the Crown, by Right of Blood alone, was never eſtabliſhed by any poſitive Law, nor yet ſettled by any conſtant or uninterrupted Cuſtom, when this Declaration was made; for the Crown had then never deſcended from Father to Son for above two Deſcents without a Depoſition, or poſſeſſed by thoſe who claimed by Right of Blood, without any other Title. For as for the three Kings of the Houſe of *Lancaſter*, I have already proved (and you your ſelf muſt alſo own it) that they could have no Title to the Crown, but from the Acts of Entail of the 7th and 8th of *Henry* IV. above-mentioned; ſo that according to Man's Law (that is, Cuſtom) and alſo the Statute-Law of this Kingdom, the Houſe of *Lancaſter* had all that time the better Title.

But to ſhew you what uncertain things Parliaments are, when King *Edward* IV. had reigned ten years, he was driven out of the Kingdom by the Earl of *Warwick*'s turning ſuddenly againſt him, and in his abſence he replaced King *Henry* VI. upon the Throne, who had been all this while kept in Priſon. And the firſt Act this King did, after his Reſtoration, was to call a Parliament, which revoked all the former Statutes and Declarations of the 39th of *Henry* VI. and 1ſt of *Edward* IV. and then entailed the Crown anew upon the Iſſue of King *Henry*, the remainder to the Duke of *Clarence*, who then took part with King *Henry* againſt his own Brother.

Vid. Grafton's *Chronicle.*

'Tis true indeed, that King *Edward* IV. returning again not long after into *England*, and regaining the Crown from King *Henry* VI. the ſaid King was not only murdered, together with his Son Prince *Henry*, but in the next Parliament was alſo attainted of Treaſon, with all others of his Party. And to let you ſee that this very Act is now null and void againſt King *Henry* VI. and his Son Prince *Edward*, ſee an Act of Parliament of the 1ſt of *Henry* VII. (not printed) which becauſe it is not commonly known, I will read it almoſt *verbatim*:

Rot. Par. 1 H. 7. n. 16. Reſtitutio Henrici ſexti.

"The King, our Sovereign, remembring how againſt all Rightwiſeneſs, Honour, Nature, and Duty, an inordinate, ſeditious, and ſlanderous Act was made, againſt the moſt famous Prince of bleſſed Memory, King *Henry* VI. his Uncle, at a Parliament holden at *Weſtminſter* the 4th day of *November*, the 1ſt year of the Reign of *Edward* IV. late King of *England*, whereby his ſaid Uncle, contrary to the due Allegiance and all due Order, was attainted of High Treaſon; wherefore our ſame Sovereign Lord, by the Advice and Aſſent of the Lords Spiritual and Temporal, and Commons in this preſent Parliament aſſembled, and by Authoritys of the ſame, ordaineth, enacteth, and eſtabliſheth, that the ſame Act, and all Acts of Attainder, Forfailure, or Diſablement made or had in the ſaid Parliament, or elſe in any other Parliament, of the ſaid late King *Edward* againſt the ſaid moſt bleſſed Prince King *Henry*, or againſt the right famous Princeſs *Margaret*, late Queen of *England*, his Wife, or the right victorious Prince *Edward*, late Prince of *Wales*, Son of the ſame bleſſed Prince King *Henry* and *Margaret*, &c. are void, annulled, and repealed, and of no force nor effect." So that by virtue of this Act, the Title of the Houſe of *Lancaſter* was again declared to be good.

But to conclude; I cannot but take notice of one Miſtake you have fallen into, by ſaying, that all Proceedings againſt King *Richard* II. are repealed by that Parliament of the 1ſt of *Edward* IV. which is not ſo: for tho I grant that the Dealings of *Henry* Earl of *Derby* (as he is there called) in impriſoning the ſaid King, and uſurping the Royal Power, is there expreſly condemned, and his murdering of him ſaid to be againſt God's Law, and his own Oath of

Allegiance

Allegiance (as certainly it was;) yet the Depoſition of the ſaid King *Richard* by Parliament is no ways repealed by this Act, for then all the Records thereof would have been quite cancelled and taken off the Rolls, whereas they ſtill remain to be ſeen at this day. And you ſee by this Act I have now recited, "That the Attainder of King *Henry* VI. is declared contrary to due Allegiance and all due Order, and all Forfeitures and Diſablements of the ſaid "King and Prince are quite annulled and made void."

M. I muſt confeſs you have ſo ſtaggered me with this Act, that I know not what to ſay to it, but that it was made in the firſt Parliament of King *Henry* VII. and before he had married the Princeſs *Elizabeth*, and conſequently had no good Title to the Crown himſelf; therefore till then I look upon him as an Uſurper. But I ſhall now proceed to ſhew you, that that very King, nay even *Richard* III. himſelf, chiefly relied, not upon any Parliamentary Election, but upon their own pretended Title of being right Heirs by Blood: for after the Death of *Edward* IV. his Son *Edward* V. was proclaimed King, and might have quietly enjoyed it, if his ambitious Uncle *Richard* Duke of *Gloceſter* had not plotted to defeat him of it; knowing well that he had no way to bring it about, but by inciting a corrupt Party of the Biſhops and Lords, together with the Lord Mayor of *London*, and ſome of his Party in the City, to ſet forth by way of Petition to the Duke, then Protector of the King and Realm, "That all the Children of King *Edward* IV. were Baſtards, ſuppoſing "that King to have been contracted with a certain Lady called *Eleanor Botelet*, before he married Queen *Elizabeth*; moreover, that the Blood of his "elder Brother *George* Duke of *Clarence* deceaſed was attainted, ſo that none "of the lineal Blood of *Richard* Duke of *York* could be found uncorrupted "but in himſelf." And there was, at the Concluſion of that Roll, an Addreſs to him from the Lords and Commons of the Kingdom, that he would take the Government upon himſelf. This fine Artifice, aſſiſted with his feigned Excuſes, which induced the leſs-thinking ſort of People to believe he deſired not the Royalty; and prompted on the other ſide with the fear of his power, procured his Acceſſion to the Throne: ſo that at laſt he and his Wife *Anne* were ſolemnly crowned King and Queen at *Weſtminſter*; and by theſe ſteps did that inhuman Prince, who had no Title to the Crown either by Deſcent or by Merit, aſcend the *Engliſh* Throne. Now you ſee that not by Election, but by pretence of Blood, and by baſtardizing and attainting his Nephews, he ſet himſelf up for the true Heir of the Crown; and therefore in the Parliament he called immediately after his Coronation, when they had declared almoſt the very ſame things as were before in the ſaid Petition, they proceed further, "to declare that the Right, Title, and Eſtate which King *Richard* III. had to "and in the Crown and Royal Dignity of the Realm of *England*, with all "things thereunto, within the ſaid Realm and without it, annexed and appertaining, was juſt and lawful, as grounded upon the Laws of God and "Nature, and alſo upon the antient Laws and laudable Cuſtoms of this ſaid "Realm, as alſo taken and reputed by all ſuch Perſons as were learned in the "aboveſaid Laws and Cuſtoms." And they proceed farther thus: "Therefore at the Requeſt, and by the Aſſent of the three Eſtates of this Realm (that "is to ſay, the Lords Spiritual and Temporal, and Commons of this Land) "aſſembled in this preſent Parliament, and by the Authority of the ſame, it "is pronounced, decreed, and declared, that our ſaid Sovereign Lord the "King was and is the very undoubted King of this Realm of *England*, with "all things thereunto belonging within the ſaid Realm, and without it, united, annexed, and appertaining, as well by Right of Conſanguinity, and "Inheritance, as by lawful Election, Conſecration and Coronation."

Vid. Grafton's *Chronicle.*

Vid. *Collection of Records*, 1 Richard 3.

So that you ſee tho they put in his Election, as alſo his Coronation, as means of obtaining the Crown; yet the pretended Hereditary Right of Blood was the main ground of his Eſtabliſhment. But as for King *Henry* VII. tho he could claim the Crown by no true Right of Inheritance, yet would he never own it to be an Election by Parliament: for as ſoon as King *Richard* was ſlain in the Battel of *Boſworth*, the Lord *Stanley* put his Crown upon *Henry*'s Head; who immediately ſtiling himſelf King, as well by Right of Conqueſt, as by being ſole Heir Male of the Houſe of *Lancaſter*, he as ſuch, cauſed himſelf to be crown'd King: and tho he afterwards call'd a Parliament, in which he procured his

Vid. *Lord* Bacon's *Life of* K. Henry VII. *fol.* 7.

Title to be recogniz'd; yet, as my Lord *Bacon* well obſerves, he was afraid to take the Crown (by his only true Title) in "right of the Lady *Elizabeth* his "Queen, for fear he ſhould only be King by Courteſy, and muſt upon the "Queen's Death have reſign'd it again; and ſhould he take it by Election, "he knew there was a very great difference between a King that holdeth his "Crown by a Civil Act of the Eſtates, and one (*mind that*) that holdeth it ori- "ginally by the Law of Nature, and Deſcent of Blood: and therefore upon "theſe Conſiderations, he reſolv'd to reſt upon the Title of the Houſe of *Lan- "caſter* as his main Right; and thereupon he caus'd an Act of Parliament to "paſs, wherein his Title was acknowledg'd (as my Lord *Bacon* there tells us) "not by way of Declaration, or Recognition of Right, as on the other ſide "he avoided to have it by a new Law of Ordinance, but choſe rather a kind of "a middle way, by way of Eſtabliſhment, and that under covert and indiffe- "rent words; that the Inheritance of the Crown ſhould reſt, remain, and "abide in the King, *&c.*" which words might be equally applied, that the Crown ſhould continue to him; but whether as having former Right to it (which was doubtful) or having it then in Fact or Poſſeſſion (which no Man denied) was left fair to Interpretation either way. I ſpeak not this to juſtify all his Actions, but to let you ſee that he chiefly inſiſted upon his Right of Inheritance, and abſolutely diſown'd any Title by Election from the People.

F. I cannot deny the matter of Fact concerning King *Richard* III's depoſing his Nephew, and uſurping the Crown, to have been very wicked, and contrary to the receiv'd Law of *England* concerning the Succeſſion at that time; and likewiſe that by baſtardizing his Brother the late King's Iſſue without due courſe of Law, and by attainting the Blood of his other Brother the Duke of *Clarence*, he would have made the World believe that he was lawful Heir by Right of Blood: yet you cannot deny but that for all this, he was ſo ſenſible of the weakneſs of his Title, that tho (it is true) his Right by Blood is declar'd in the firſt place in that Act of Recognition, yet it is plain he would not rely upon that alone; and therefore you ſee the Parliament there alſo inſiſts upon his Right by Election and Coronation, which they would never have done, had it not been that they look'd upon it for good Law, that whoever was crown'd King, and call'd a Parliament, and had his Title therein recogniz'd and confirm'd, was thenceforth true and lawful King to all intents and purpoſes. Therefore tho you have omitted it, I ſhall proceed to ſhew you, what this Statute alſo farther declares: For after they had declar'd the ſaid King's Title, as grounded upon the antient Laws, and laudable Cuſtoms of the Realm, according to the Judgment of all ſuch Perſons as were learned in them; they proceed thus: "Yet nevertheleſs, foraſmuch as it is conſider'd, that "the moſt part of the People is not ſufficiently learned in the aforeſaid Laws "and Cuſtoms, whereby Truth and Right in his behalf, of likelihood may "be had, and not clearly known to all People, and thereupon put in doubt and "queſtion; and over this, how that the Court of Parliament is of ſuch Au- "thority, that a Declaration made by the Three Eſtates, and by the Autho- "rity of the ſame, maketh before all other things moſt faithful and certain "quieting of Mens Minds, and removeth the occaſion of Doubts, and ſeditious "Language; therefore they alſo declare that he was the undoubted King." Whence 'tis evident, that the Reaſon of this Law ſuppoſeth that the Subjects in general are not capable of underſtanding the Laws and Cuſtoms upon which the Titles of our Kings depend; and that the beſt Satisfaction that the generality of the People can poſſibly have in thoſe high Matters, was to reſt on the Judgment and Determination of the Kingdom, declar'd by Act and Authority of Parliament, and therein to acquieſce for the preventing Sedition: therefore what I ſaid before in the Caſe of King *Stephen*, is alſo true in this, *quod fieri non debuit, factum valet*; and all the Acts made in the Reign of this King *Richard*, tho a horrid Uſurper, were never repeal'd, but ſtand good at this day.

As to what you ſay concerning the manner of King *Henry* VII's coming to the Crown, it is alſo true; but as for his Title to it by Right of Succeſſion, that was certainly falſe: for his Mother the Counteſs of *Richmond* was then alive, by whom he claim'd the Crown, and liv'd divers Years after he was King. So that tho I grant that it is recited in the Parliament-Roll that he claim'd the Crown in Parliament, *tam per juſtum titulum hæreditantia, quam per verum Dei judicium*,

Rot. Parl. 1 Hen. VII.

judicium, in tribuendo ſibi victoriam de Inimico ſuo in campo. Tho the latter of theſe Titles may be true, *viz.* the Conqueſt of King *Richard*, eſpecially when once he was confirm'd and recogniz'd in Parliament, yet that the former could not be ſo, is plain from what I have now ſaid; ſo that it is certain that King *Henry* VII's beſt Title was neither by Inheritance nor Marriage with the Princeſs *Elizabeth*, but by the Act of Parliament, as appears by the unprinted Statute it ſelf, ſtill upon the Roll; which ſince you did not repeat, I will: the Title is *Titulus Regis*, and it runs in theſe words; "To the Pleaſure of Almighty God, "the Wealth, Proſperity, and Surety of this Realm of *England*, to the ſin- "gular Comfort of all the King's Subjects of the ſame, and in avoiding of all "Ambiguities and Queſtions, be it ordained, eſtabliſhed, and enacted by Au- "thority of this preſent Parliament, that the Inheritance of the Crowns of "the Realms of *England* and of *France*, with all the Pre-eminence and Dignity "Royal to the ſame pertaining, and all other Seignouries to the King belonging "beyond the Sea, with the Appurtenances thereto in any wiſe due or pertain- "ing, be, reſt, remain and abide in the moſt Royal Perſon of our now Sove- "reign Lord King *Henry* the VIIth, and in the Heirs of his Body lawfully "coming perpetually, with the Grace of God ſo to endure, and in none other." *Vid.* Buck's *Hiſtory of* Richard III.

Now this was done ſome time before he married with the Princeſs *Elizabeth*; for as ſoon as this Act was made, "the Commons requeſted the King to marry "*Elizabeth*, the Daughter of King *Edward* the IVth, that by God's Grace there "might be Iſſue of the Stock of their Kings," (as their own words were.) That this was rather to preſerve the Blood-Royal, than to give any new Confirmation to his Title, appears from hence, that there was never any other Act after the Marriage to declare the Right of the Crown to be in the King and Queen, or ſo much as to entail it on the Iſſue of their Bodies: ſo that it is plain he enjoy'd it not in his Wife's, but in his own Right, ſince he held it after her Death by virtue of this Statute; which plainly ſhows, that (in the Judgment of that Parliament) the Houſe of *Lancaſter* was looked upon to have the better Title. And tho it is true that the King procured the Pope's Bull, now in the *Cotton Library*, to ſtrengthen his Title, threatning all thoſe with Excommunication that ſhould offer to rebel againſt him; yet even that Bull (tho his Right by Inheritance and Conqueſt be firſt mentioned) concludes with his Title by the Election of the Prelates, Nobility, and People of *England*, and the Decree or Statute of the three Eſtates in their Convention, called the Parliament, as this Bull it ſelf expreſſes it. B. H. S. *p.* 391.

M. I muſt confeſs you have told me more of theſe matters than I ever heard of before, for I always thought that there had been no Act of Settlement upon King *Henry* the VIIth, until after his Marriage with the Princeſs *Elizabeth*; for till then I look upon him as an Uſurper upon her Right, as he was alſo after her Death upon his Son's ſucceſſively: ſo that if you will have my Opinion, I conceive that this Statute, being made before he had a lawful Right to the Crown, is wholly void, as is alſo that of the Repeal of the Attainder of King *Henry* the VIth, for the ſame reaſon.

But let his Title be what it will, it is certain his Son, King *Henry* the VIIIth, ſucceeded to the Crown, as Heir rather to his Mother than his Father, and ſo was in by Remitter; but as for King *Edward* the VIth, he was undoubted Heir by Right of Blood, as being the only Heir Male to his Father: and tho it is true, that King *Henry* made divers Statutes, whereby he alter'd the Succeſſion of the Crown, as to his two Daughters *Mary* and *Elizabeth*, ſometimes declaring them both illegitimate, and then again giving them a Right to ſucceed by Act of Parliament; yet theſe Acts of Succeſſion were obtain'd purely by the King's Sollicitation and Command. And tho at laſt he got himſelf impower'd to make a Will, whereby he might ſettle and entail the Crown on whom he pleaſed; yet all theſe Acts of Parliament, as alſo this, ſignified juſt nothing after his Death: for tho his ſaid Daughters, Queen *Mary* and *Elizabeth*, did one after another ſucceed his Son, King *Edward* the VIth, yet was it not by virtue of any of theſe Acts of Parliament, or by the aforeſaid Will, but by pure Right of Inheritance (or colour of it at leaſt;) and therefore in the firſt of Queen *Mary*, there is an Act declaring "the Queen's Highneſs to have been "born in moſt juſt and faithful Matrimony, and alſo repealing all Acts of Par- "liament, or Sentence of Divorce, made or had to the contrary." B. H. S. *p.* 393. 1 Mary, *c.* 2.

Now certainly the Intention of this Act was to declare her Succeſſion to be Inheritance by Right of Blood; ſo likewiſe in the firſt of *Elizabeth*, the "Lords Spiritual and Temporal, and the Commons, do declare and confeſs
1 Eliz. c. 1. "that Queen *Elizabeth* is in very Deed, and of mere Right, by the Laws of "God, and by the Laws and Statutes of this Realm, their moſt rightful and "lawful Sovereign Queen, and that ſhe was rightly, lineally, and lawfully de-"ſcended and come of the Blood-Royal of this Realm of *England*:" All which (whether it were true or not in her) yet the lineal and lawful Deſcent of Queen *Elizabeth*, was the ground upon which ſhe was declared to be their rightful and lawful Queen.

And tho I grant that King *Henry* the VIIIth had by his laſt Will and Teſtament poſtponed all the Iſſue of his Siſter *Margaret* Queen of *Scots*, and preferred the Children of his younger Siſter, the Queen *Dowager* of *France* (whom ſhe had by *Charles* Duke of *Suffolk*) before them; yet was this Will afterward cancelled, and torn off from the Rolls in Chancery, where it was recorded,
B. H. S. 394. and that by order of Queen *Mary* (as is ſuppoſed.) So that *James* the VIth, King of *Scotland*, was by Right of Blood declared and proclaimed King of *England* immediately upon the Death of Queen *Elizabeth*, as right Heir of the Crown: And in the firſt Parliament after his Coronation, his Title is by them particularly recognized in the words, which I deſire you to read with me; "where after ſetting forth his Pedegree, as lineally deſcended from the Lady "*Margaret*, eldeſt Daughter of King *Henry* the VIIth, and Queen *Elizabeth* his "Wife, Daughter of King *Edward* the IVth, they farther acknowledge King "*James* their Lawful and Rightful Liege Lord and Sovereign; and farther "ſay, as being bound thereunto both by the Laws of God and Man, that they "do recognize and acknowledge, that immediately upon the Diſſolution and "Deceaſe of *Elizabeth*, late Queen of *England*, the Imperial Crown of the "Realm of *England*, and all Kingdoms and Dominions belonging to the ſame, "did by inherent Birthright, and lawful and undoubted Succeſſion, deſcend and "come to his moſt Excellent Majeſty, being lineally, lawfully, and juſtly next "and ſole Heir of the Blood Royal of this Realm; and thereunto they do "moſt humbly and faithfully ſubmit and oblige themſelves, their Heirs and "Poſterities for ever, until the laſt drop of their Blood be ſpent." I have been the more particular in the Recital of this Act, becauſe it ſtands not only as a perpetual Declaration of the ſenſe of the Repreſentatives of the whole Nation for an Hereditary Succeſſion of the Crown, without any Vacancy or Election, but alſo becauſe it contains their ſolemn Engagements for themſelves and their Poſterities for ever to King *James* and his Iſſue, and conſequently to his right Heirs for ever. So that nothing can be more directly contrary than this Act to the late Proceedings of the Convention, firſt in declaring the Throne vacant, and then placing the Prince and Princeſs of *Orange* therein.

F. I will not deny but that King *Henry* the VIIIth, and *Edward* the VIth, both ſucceeded by Right of Inheritance; but whether the former claimed it as Heir to his Mother or his Father, is much to be doubted, ſince being Heir to both of them, he never declared by what Title he held the Crown: but as for his two Daughters, Queen *Mary* and Queen *Elizabeth*, it is certain their beſt Titles were from theſe Acts of Parliament: for as to Queen *Mary*, it is plain, that at her coming to the Crown, ſhe could not be looked upon as Heir by
Chap. 22. Right of Blood, becauſe by the Statute of the 25th of *Henry* the VIIIth, his Marriage with Queen *Catherine* her Mother was declared unlawful, and the Crown ſettled upon the King, and the Heirs of his Body lawfully begotten on Queen *Anne Bullen*: and beſides all this, ſhe was but Siſter by the half Blood to King *Edward* the VIth, and ſo could not inherit as Heir to him. And tho in the firſt Year of her Reign, the Parliament ('tis true) took off her Illegitimation, and repeal'd the Acts of the 25th and 28th of *Henry* the VIIIth, whereby ſhe was declared illegitimate; yet in this, the Parliament ſeems rather to provide for the Honour of her Deſcent, than (as you would have it) to declare her Succeſſion to be Inheritance by Right of Blood; becauſe the Statute of the 35th of *Henry* the VIIIth, whereby the Crown was ſettled upon Prince *Edward* and the Heirs of his Body, the remainder upon the Ladys *Mary* and *Elizabeth*, and whereby the King had alſo power given him of diſpoſing the Crown by Letters Patents, or by Will, was not at all repealed: and for which a memo-

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rable Reaſon is given in both theſe Acts, " leſt if ſuch Heirs ſhould fail, and " no proviſion made in the King's Life who ſhould rule and govern this Realm " for lack of ſuch Heirs, that then this Realm ſhould be deſtitute of a law- " ful Governour." Whereby it ſeems plain, that the Parliament then eſteemed no Heirs to have a Right by Law farther than had been declaeed by theſe Statutes.

So likewiſe for Queen *Elizabeth*, her Title was more apparently by Act of Parliament: and that ſhe looked upon her ſelf ſufficient to have ſucceeded by virtue of the Limitation of the Statute of the 35th of *Henry* the VIIIth, laſt mention'd, appears in that ſhe never procured her Mother's Marriage to be declared good, and conſequently her own Illegitimation to be taken off. So that take it which way you will, it is certain that either Queen *Mary*'s or Queen *Elizabeth*'s Title muſt have been only by Act of Parliament, ſince ſhe was born whilſt Queen *Catherine*, King *Henry*'s firſt Wife, was living: and therefore when the Parliament you mention, in the firſt Year of Queen *Elizabeth*, declared, " That ſhe was rightly, lawfully, and lineally deſcended, and come of " the Blood Royal of this Realm;" theſe words can only be underſtood of ſuch a lineal and lawful Deſcent as is here declared to be ſo by virtue of this, as well as the former Statute, and not according to any Hereditary Deſcent at Common Law, ſince it is very well known, that as long as the Pope's Diſpenſation for King *Henry*'s Marriage with the Princeſs *Catherine*, his Brother's Wife, was allowed for good, as it was till the latter end of *Henry* the VIIth's, and all the firſt twenty five Years of *Henry* the VIIIth's Reign, the Princeſs *Mary* was looked upon as the only preſumptive Heireſs of the Crown. This I tell you, not to invalidate Queen *Elizabeth*'s Title, but to let you ſee that Acts of Parliament, if they declare that which is apparently falſe in matter of Law or Fact, are not to be credited, unleſs you will give them more power than God himſelf, who cannot (as all Divines agree) make that to have been done which was never done, or that not to have been done, which hath once come to paſs.

I come now, in the laſt place, to examine the Act of Recognition of King *James* the Firſt's Title to the Crown, which I will not deny to have been by Right of Blood, ſince none of the Deſcendants of King *Henry* the VIIth could have any Title before him: for tho it is true it was otherwiſe ordained by King *Henry* the VIIIth's Will, yet that (as you your ſelf ſhow) was not only cancelled in Queen *Mary*'s time, but was alſo void in it ſelf. For whereas by the Statute of the 35th of *Henry* the VIIIth, there was a power given him to diſpoſe of the Crown, either by his Letters Patents, or elſe by his laſt Will ſigned with his Hand; yet was this Power never legally executed: for thoſe that have argued againſt this Will, have told us, that he never ſigned it in his life-time, but that a ſtamp of his Name was put thereunto after his Deceaſe; as manifeſtly appeared by open Declaration made in Parliament of this matter by the Lord *Paget* and others, that King *Henry* did never ſign it with his own hand; as was alſo proved by the Pardon obtain'd for one *William Clerke*, for putting the Stamp upon the ſaid Will after the King was departed. So that tho I grant that King *James* had a very good Title to the Crown of *England* by Inheritance, yet whether it was from King *Henry* the VIIth alone, or from Queen *Elizabeth* his Wife, is not there declared; only that he was lawfully deſcended of Lady *Margaret*, eldeſt Daughter to King *Henry* the VIIth, and Queen *Elizabeth* his Wife, eldeſt Daughter of King *Edward* the IVth; and therefore, " that they are bound both by the Laws of God and Man to re- " cognize his Majeſty as ſole Heir of the Blood Royal of this Realm." All which is ſo far true, if by the Laws of God, and Man's Law, you will thereby underſtand ſuch Laws as God impowers the King and Parliament to make; for otherwiſe, there is no more heed to be taken of this Declaration, than that which was made before to *Richard* the Third, which alſo declared him to have a good Title to the Crown by the Laws of God and Nature, and the Laws and Cuſtoms of this Realm. So that I ſee nothing in all this Act of Recognition that at all contradicts my Notion, that King *James*'s Title is wholly derived from the Act of Settlement made on King *Henry* the VIIth, from whom he was lineally deſcended; therefore tho his Pedegree be alſo derived from Queen *Elizabeth*, eldeſt Daughter to King *Edward* the IVth, yet this was only *ex abundanti*,

Vid. Lethington's *Letter to Sir* Will. Cecil. *Appendix to the 2d Vol. of the Hiſtory of the Reformation*, fol. 269.

danti, to ſhow that he had every way a Title to the Crown; and if ſhe her ſelf had any Title, it was wholly by virtue of thoſe Acts of Parliament of the 39th of *Henry* the VIth, and 1ſt of *Edward* the IVth, which veſted the Crown in *Richard* Duke of *York*, and King *Edward* the IVth, his Son, and which laſt Act firſt declared that the three *Henrys* of the Houſe of *Lancaſter* were only Kings in *Deed*, and not of *Right*; for before that time I defy you to ſhow me in all our Hiſtories or Law-Books any ſuch Diſtinction. In all foregoing times, he that was ſolemnly anointed and crowned King in Deed, was alſo looked upon ſo to be in point of Right: and therefore let thoſe Statutes you ſo much inſiſt upon, talk ever ſo much of any King's being ſo, by any fundamental Hereditary Right, precedent to, and independent from the Power of the two Houſes of Parliament; I am very well ſatisfied that ſuch a Declaration muſt be void in it ſelf, ſince I have already proved that there was no ſuch Law of Succeſſion ever ſettled by any general Cuſtom, or Common Law, and it hath been near as often broken as obſerved: and as for any poſitive or Statute-Law, enacting any Hereditary Right of Succeſſion, you do not ſo much as pretend to ſhow it. So that I think I have ſufficiently proved the three Propoſitions I laid down, *viz.* That ever ſince the time of *Edward* the Firſt, tho the Crown has been claimed by Right of Blood, yet has it not been very often enjoyed by Princes who had no juſt pretence to that Title. Secondly, That the two Houſes of Parliament have often, notwithſtanding that Claim, placed, or at leaſt fixed the Crown upon the Heads of thoſe Princes, who they very well knew could have no Hereditary Right to it. Thirdly, That ſuch Princes have been always taken for Lawful Kings, all their Laws ſtanding good at this day, without any Confirmation by their Succeſſors. So that all the modern Acts of Parliament for entailing the Crown, being made and ordained by the Counſel and Aſſent of the Lords and Commons, are ſo many plain Declarations, and evident Recognitions, what the fundamental Conſtitution of the *Engliſh* Government was in that grand Point.

M. I did not think that you, who were ſo great an Admirer of the two Houſes of Parliament, ſhould now be ſo much againſt their Power, in joining with the King to declare what the true Right of Succeſſion to the Crown is, and hath ever been from time beyond memory; but I ſee Acts or Declarations of Parliament ſignify nothing with you if they are againſt your Hypotheſis, or elſe you would never go about thus to expoſe thoſe Acts of Parliament of King *Edward* the IVth, and King *James* the Firſt, whereby they are declared both by the Laws of God and Man undoubted Heirs of the Crown. And the laſt Act I cited, *viz.* that of King *James* the Firſt, doth ſufficiently confute your Notion of a Vacancy of the Throne; where it is expreſly declared, "That immediately upon the Deceaſe of Queen *Elizabeth*, the Crown of *Eng-*"*land*, with all the Dominions belonging to the ſame, did by inherent Birth-"right, and lawful and undoubted Succeſſion, deſcend and come to his Ma-"jeſty King *James*." So that if there then were no Vacancy of the Throne, I cannot ſee how there could be any ſuch thing now, the next Heir to the Crown (be he who they will) being certainly not ſo far removed from King *James* I. as himſelf was from King *Henry* VII. under whom he claimed.

F. I muſt ſtill confeſs my ſelf to have a great Veneration for the ſolemn Declarations of King and Parliament, made by any Statute; yet not ſo as to idolize them, or to look upon all their Declarations as infallible. I grant indeed, that whoſoever is by them declared and recognized for King or Queen of *England*, is to be acknowledged and obeyed as ſuch by all the Subjects of this Kingdom, without farther queſtioning his Title. But if not content with this, they will alſo take upon them to declare that ſuch Kings or Queens have an undoubted Hereditary Right, *by the Laws of God and Nature*, when I plainly find from the Holy Scriptures, as well as the Hiſtory of matter of Fact, and the Knowledge of our Laws, that they have no other Title than what the Laws of the Land have conferred upon them; they muſt excuſe me, if I do not acquieſce in ſuch Declaration. Nay, you your ſelf cannot deny but that it was groſs Flattery in the two Houſes of Parliament to declare, that *Richard* the Third (for example) had a true and undoubted Right to the Crown, by the Laws of God and Nature, and alſo by the Laws and Cuſtoms of this Realm, when you know he was a notorious Uſurper upon the Rights of his

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Brother, King *Edward*'s Children. Now how can I be assured that the like Declaration made to King *James* the First, was not likewise a piece of Courtship of the Representative of the Kingdom to this King, then newly settled in his Throne? since we find the People of this Nation, when they are in a kind fit, never think they can say or do too much for their Princes: And therefore I must freely tell you, that it is not the bare Declaration of a Parliament that this or that has been always the Law or Custom of this Realm, when we can find from History that it has never been so held for above four hundred Years at least, and therefore not beyond the Memory of Man (as you suppose) since that must be before the Reign of *Richard* the First, as I have already proved to you at our Eighth Meeting.

But to answer your Objection against the Vacancy of the Throne, I do freely grant, that as often as the Crown descends by lineal Succession, there can be no Vacancy of the Throne, as it did in the Case of King *James* the First; yet doth it not therefore follow, that there can never be any such Vacancy in any Case whatsoever, since certainly it may so happen, that all the Heirs Male of the Blood-Royal may fail, as it happen'd in the Case of *Scotland*, when *John Baliol* and *Robert Bruce* contended for the Crown, which not being to be decided by the Estates of the Kingdom, they were forced to refer it to our King *Edward* the First: and as also happen'd in *France*, when *Philip* of *Valois*, and our *Edward* the Third, both claimed the Crown, which was decided by a great Assembly of the States of *France* in the favour of the former, who claimed as Heir of the Male Line, against King *Edward*, who was descended by a Woman. And if King *James*'s Abdication or Forfeiture (call it which you will) is good, pray give me a sufficient reason why the Convention of the Estates of *England* should not have as much Authority as those of *France* or *Scotland*; this being as much or more a limited Kingdom, than either of the other ever were.

M. I do not deny that, but pray shew me any sufficient Reason why the Convention should now vote a Vacancy of the Throne, since there was certainly an Heir apparent not long since in *England*, and I hope is now safe in *France*, who ought to fill it; or at least there should have been some sufficient Cause alledged against him, to prove that he was not the true Son either of the King or Queen; and till this was done, they could not with any Right or good Conscience place any other Relation of his in the Throne, since every Person ought to be esteemed the Son of that Father and Mother that publickly own'd him for such: for it is a Maxim in our, as well as your Law, *Filiatio non potest probari.*

F. How this could be performed without first declaring the Throne vacant, I cannot apprehend; for you your self must grant, that there have been great Doubts and Suspicions of the Reality of this Prince of *Wales:* and therefore that being one great reason of the Prince of *Orange*'s coming over, the Truth of this Child, whether he was really born of the Body of the Queen, *is first to be examined and determined*, before he can be declared King of *England* in the room of his supposed Father, whom we will also suppose civilly (tho not naturally) dead. And till this be done (unless you would have had him been declared King without ever examining the Truth of the matter) the Throne must have continued vacant till it could be decided, whether he, or his half Sister the Princess of *Orange*, were to fill it: and if so, while the Convention remain'd in this suspence, they could do no other than vote the Throne vacant, till they were sufficiently satisfied who had the best Right to it.

But to answer your Argument, that unless something could have been presently alledged against this Infant, to have proved him not to have been born of the Body of the Queen, he ought to have been declared King: The Maxim you mention may be well allowed in the case of common Inheritances, but not in that of Crowns; for in those we have read, that common and violent Presumptions have been looked upon as sufficient Proofs to set aside a supposed Heir of the Crown: as for example, something above two hundred Years since, *Henry* King of *Castile*, called the Impotent (because he was not able to get his Queen or any other Woman with Child) did out of hatred to his Sister *Isabella*, permit a Favourite of his to lie with his Queen, and get her with Child: she was brought to bed of a Daughter, but the Estates of the Kingdom would by no means admit her for Legitimate, because the Queen had before declared her Husband to be impotent; and therefore they did not only protest against her

Vid. Mariana's *History of* Spain.

her Legitimacy in the King's life-time, in an Aſſembly of the Eſtates, but alſo as ſoon as he died, they ſet this pretended Princeſs quite aſide, and declared the Siſter of the late King, Queen of *Caſtile*, who was married to *Ferdinand* King of *Arragon*. Now though I will not ſay, that either the Suſpicions or Proofs againſt the preſent Prince of *Wales* are as pregnant as thoſe againſt that Princeſs, yet certainly they were ſufficient to debar him from being placed in the Throne, till ſuch time as it ſhall be made apparent that he is really Son to the Queen.

M. If the Convention had gone this way to work, I grant there might have been ſome colour for what they have done: but then they ought, before they had placed any body elſe in the Throne, to have firſt examined the Truth of the Queen's being with Child, and her being truly delivered of this Prince, before ever they had declared the Prince and Princeſs of *Orange* King and Queen; and till this had been done, certainly the Throne ſhould have ſtill continued vacant: therefore I doubt your Convention have made more haſte than good ſpeed in this matter, which certainly required much more Deliberation.

F. Come, I will for once admit that they ought, in the firſt place, to have examined your Prince's Title, but this is ſtill to be underſtood, as far as it was poſſible for them to do it, as it ought: now pray tell me how this could be done, when the Infant was not only carried away into a foreign Kingdom, but alſo the Midwife, the Nurſe, and ſeveral other of the Queen's near Servants and Attendants went away along with him? who if they had been here, to have been croſs-examined, might have declared the Impoſture (if it be one.)

M. But pray, Sir, are there not Proteſtant Ladies enough left behind, who have already depoſed before the Council (as appears by their Depoſitions publiſhed by the King's expreſs Command, and enrolled in Chancery, *in perpetuam Rei memoriam)* not only that her Majeſty was with Child, but that alſo ſhe was really delivered of this Prince? ſo that the Prince of *Orange* and the Convention ought to have in the firſt place ſummoned thoſe Witneſſes you mention to be now in *France*, to have appeared before them, and if they had not come, then to have proceeded as the matter had required.

F. You muſt then grant that the Proteſtant Witneſſes alone, who are now in *England*, were not ſufficient; for if they ſhould have depoſed that this Child had been an Impoſtor, I ſuppoſe you would not have reſted ſatisfied that they had ſpoke nothing but the Truth, ſince the Witneſſes now in *France* (who beſt know the matter of Fact) might have ſworn the contrary: but as for ſending any Summons for them into *France*, it was altogether in vain, and that which the Convention were not at all obliged to do, becauſe neither King *James* nor his Queen did ever own the Power of the Convention to hear or determine this Affair, and therefore would not have let the Witneſſes come over. For after the Throne was declared vacant, the King muſt, by ſending thoſe Witneſſes, have tacitly owned the Authority of the Convention, in declaring himſelf to have abdicated the Throne, as alſo that they might place his Son therein: ſo that any ſuch Summons would certainly have been only rejected with Scorn, and we ſhould have gained nothing but the loſs of ſo much time, and hindred our preſent Settlement and Defence. Nor was the Convention obliged to do it, ſince the Parliament it ſelf is not bound to take cognizance of any Perſon or Thing that is not within the Kingdom of *England*, or the Territories belonging to it; and therefore it was not their buſineſs to enquire (unleſs it had been brought before them) what was become of this Infant, whether he was legitimate or not, or whether he was alive, or elſe had been caſt away at Sea, or taken by Pirates; any of which might very well have been. And therefore indeed this buſineſs could never have been decided, unleſs the Infant himſelf were actually preſent, and ſufficient proof made, not only that this was the ſame Child that was born of the Queen, but which was alſo carried away into *France*; all which could never have been examined as it ought, without the Child's perſonal Preſence here, which I ſuppoſe you will grant that King *James* and his Queen would never admit of, as things now ſtand. Therefore ſince a thorow Examination into this buſineſs was impoſſible to have been performed, the Convention have done no more than what can be juſtified, in firſt declaring the Throne vacant, and then who ſhould fill it.

M. Well,

M. Well, but admit the Caſe were ſo as you have put it, the Kingdom ought however to have remain'd without a King, till the Succeſſion had been duly ſettled; ſince according to the Act of Recognition to King *James* I. "The Nation did "not only oblige themſelves, but their Poſterity (that is, we that are now alive) "to that King and his Right Heirs." And therefore till this Prince's Right had been determin'd, either the Convention ſhould have govern'd, or elſe they ought to have made the Prince of *Orange* only Governour or Regent of the Kingdom, and not to have plac'd him and his Princeſs on the Throne, till the young Prince had died, or elſe had been prov'd to be an Impoſtor.

F. I doubt not but I can ſhew you not only the Unreaſonableneſs, but alſo the unpracticableneſs of this Suppoſition. Firſt, Its Unreaſonableneſs, ſince you are very much miſtaken to alledge that the whole Nation, by that Act of Recognition to King *James*, oblig'd themſelves, and their Poſterities, to him and his right Heirs by Blood. 'Tis true they there tell him, "That they made "that Recognition as the firſt Fruits of their Loyalty and Faith to him, and "his Royal Progeny and Poſterity for ever: And alſo when they have acknow-"ledg'd him to be juſtly and lawfully next and ſole Heir of the Blood Royal "of this Realm, and that they thereunto ſubmit and oblige themſelves, their "Heirs and Poſterities for ever: *&c.*" there is no more meant or expreſs'd in all this, than that the whole Nation did by their Repreſentatives in Parliament oblige themſelves and their Children to King *James* and his Poſterity for ever. And I think that this part of the Recognition is ſufficiently perform'd, by placing two of his Great Grandchildren in the Throne: for as to the words rightful or lawful Heirs, they are not to be found in all this Statute.

But as for your Notion of a Regency, it is plain it could ſignify nothing, either for our preſent Security, or future Settlement; not to the former, ſince this Regent (be he whom he would) muſt have govern'd in the Right of ſome body or other, ſince I never read of a Regency in *England*, during a Vacancy of the Throne; therefore I will at preſent admit that the Vote for King *James*'s Abdication had never been made, only that the Prince of *Orange* had been declar'd Regent of the Kingdom, till ſuch time as King *James* would have given the Nation ſufficient Satisfaction of his reforming all paſt Miſcarriages, and that his future Government ſhould be according to Law. Now I would very fain know how it can be juſtify'd, according to your Notion of the King's abſolute irreſiſtible Power, to place a Regent over the Kingdom to govern in his ſtead, whether he will or not, when it is certain he is neither a Minor, an Idiot, nor a Lunatick: ſo that then he muſt have return'd again to the Government whenever he had pleas'd, or elſe the Convention muſt have been Judges whether the Security or Satisfaction he offer'd was ſufficiently ſatisfactory or not; for if he himſelf was to be ſole Judge in this Caſe, I ſuppoſe you will grant this Regency would quickly have been at an end. But on the other ſide, if this Right of judging had been left in the Convention, whether the King's Propoſals were ſatisfactory or not, they might alſo have voted them not to be ſo; and till this was done, they might very well have juſtify'd their keeping him out of the Kingdom by Force. Now how that could have conſiſted with your Doctrine of the King's irreſiſtible Power, I deſire you would ſatisfy me if you can. So that by this Regency, the King muſt either have been depriv'd of his whole Power, or he muſt not; if the former, that would have been as bad as depoſing him from being King, and had left him no more than the bare Title: and whether this had not been a great deal worſe (as more hypocritical) than the Convention's declaring him to have abdicated the Government, I leave it to any indifferent Perſon to judge.

But if you will ſuppoſe that this Regent muſt have govern'd in the name of your Prince of *Wales*, as being declar'd King, that would have been to have granted his Title to be good without hearing of it, and had been indeed to have given up the main Point in diſpute.

M. I ſee you would fain find out any ſhifts for this pretended Vacancy, and placing thoſe in the Throne to whom it doth not belong; yet tho I grant that the word *Right* Heirs is not expreſly recited in this Act of Recognition to King *James* I. yet for all that, it is implied: for the Oath of Allegiance is enacted by *Elizabeth* I. to be taken to the Queen, her Heirs, and lawful Succeſſors; and by the Oath of Supremacy (enacted in the IVth of King *James*) we

are likewiſe oblig'd to ſwear, that we will bear true Allegiance to his Majeſty, his Heirs, and Succeſſors. Now who theſe Heirs are, this very Act of Recognition doth ſufficiently declare, *viz.* the next Heir by deſcent of Blood; for as King *James* is hereby acknowledg'd to be Heir by inherent Birthright, ſo when they oblige themſelves, and their Poſterities to King *James*, and his Progeny, it is to be underſtood (by parity of Reaſon) that they oblige themſelves and the Nation, for all future Generations, to him and his Iſſue in that ſenſe; as that their Allegiance ſhould be only due to him, or her, who ſhould be lawful Heir to their Father, Brother, or Uncle, according to thoſe Rules of Succeſſion, that had been commonly receiv'd for above four hundred Years laſt paſt: that is to ſay, the eldeſt Son, Brother, or Daughter, being ſtill to be prefer'd before the younger, and Sons before Daughters, and the ſame Rule muſt alſo hold for their Deſcendants; ſince upon this ground it was, thet the Title of the Houſe of *York* was prefer'd by Parliament before that of *Lancaſter*; and the Title of the King of *Scots*, who was deſcended from the eldeſt Siſter, before that of the Houſe of *Suffolk*, who came from the younger. And this being never alter'd by any ſubſequent Statute (or if it had, I think it would not have been good) the Convention ought either to have declar'd the Prince of *Wales* King immediately, or at leaſt to have continu'd the Throne vacant, let the Difficulties or Inconveniences that you ſuppoſe might have follow'd, be ever ſo great: and therefore it was their Duty to have ſought out King *James* wherever he had been, and to have deſir'd him to have ſent over the Prince, together with the Witneſſes that went away with him. And till this had been abſolutely refus'd, or elſe that upon a fair hearing this Prince had been prov'd an Impoſtor; I ſay till one of theſe had been done, the Throne ought ſtill to have continu'd vacant (if it were ſo at all) nor till this had been clear'd could they have juſtified the placing any body elſe upon the Throne, tho ever ſo nearly related to the King; whom I will ſuppoſe for Diſcourſe-ſake, to have really abdicated the Kingdom.

F. I will not deny that the legal and common courſe of Succeſſion ought to be inviolately obſerv'd, according to the Rules you have now laid down, whenever it may conſiſt with the publick good and ſafety of the Kingdom; and yet for all that I cannot believe, that the King himſelf, much leſs any other, that only pretends as next Heir to him, can have ſuch an abſolute Right to the Kingdom, as that no Conſiderations whatſoever can make them loſe or forfeit their Right thereunto: therefore I look upon the Government of a Kingdom not to be like that Intereſt which a private Man hath in an Eſtate, which is his Right let him be what he will, or let him manage it how he will. Whereas in the Right to a Kingdom, I take it to be a true Maxim, That the Repreſentatives of a Nation (as the Convention was) ought to have more regard to the Happineſs and Safety of the whole People, or Commonwealth, than to the Dignity or Authority of any particular Perſon whomſoever, or howſoever nearly related to the Crown; when it is evident the advancement of ſuch a Perſon to the Throne, will prove deſtructive to our Religion, Civil Liberties and Properties.

Now give me leave to apply what I have ſaid to the Point in queſtion: Let us therefore at preſent ſuppoſe, that your Prince of *Wales* is true and lawful Son to King *James* and Queen *Mary*; and let me alſo farther ſuppoſe, that in his late Paſſage over Sea, he had been taken by the Pirates of *Algiers*, or *Tunis*, and by them carried to one of thoſe places, and bred up in the *Mahometan* Religion; and after he had been circumciſed, and fully grounded in that abominable Superſtition, the Grand Signior, together with the Kings of *Algiers* and *Tunis*, ſhould ſend this Nation word, that if they would not admit him quietly for their King, and allow all thoſe Prieſts he ſhould bring with him a free Exerciſe of their Religion in *England*, they would then make War upon this Nation with all the Forces they could raiſe. I ask you what we ought to do in this Caſe, whether we ſhould receive him for our King, or keep him out?

M. I muſt confeſs it is a nice Queſtion; and ſince it is a thing that never did yet, nor I hope ever will come to paſs, I think I may freely anſwer you, That ſuppoſing this Prince could be prov'd to be the very ſame who was carried away ſo many Years ago, we ought, notwithſtanding his falſe Belief, to receive him; eſpecially

eſpecially if he would ſolemnly ſwear, only to worſhip God in private after his own way; and that he would ſwear not to violate our Religion, or invade our Liberties and Properties: and this being done, I think we ought then to admit him for our lawful Sovereign; ſince, as you your ſelf have already acknowledg'd at our third Meeting, the ſupreme Powers are not to be reſiſted, becauſe they are of a different Religion from that of the People or Nation they govern.

F. Very well: But let me tell you, in this you are much more kind to *Mahometan* and Heretical Princes, than the Church of *Rome*, who have decreed, That no Prince ought to be receiv'd as right Heir to a Crown, who is a Pagan, *Turk*, or Heretick; and upon this ground it was, that the States of *France*, during the time of the League, by the Pope's Decree, refus'd to own *Henry* King of *Navarre* for their Sovereign; and alſo, that the Papiſts of the Nuncio-Party in *Ireland* during the late Rebellion, refus'd to own the late Duke of *Ormond* for Lord Lieutenant of that Kingdom, becauſe the King was a Proteſtant.

But pray anſwer me a Queſtion or two further: Suppoſe this Prince refus'd to promiſe theſe things, or elſe if he did promiſe, and ſwear them; pray tell me how could we be aſſur'd, that according to the Principles of that Religion he had been bred under, and thoſe Arbitrary Notions he had learn'd concerning the abſolute Power of Kings in *Barbary*, and which he would believe due to himſelf, as being as abſolute a Monarch as any of them: I ſay, how ſuch a Prince ever could be truſted? Since if he had the whole Power of the Militia in his hands, he might bring in what number of *Turkiſh* or *Mooriſh* Guards he ſhould think fit, who might eaſily ſet up that Religion and Government too, in this Nation; ſince, according to your Principles of Paſſive Obedience and Non-reſiſtance, no Man ought to lift up ſo much as a Finger againſt him, tho he went about to make us all *Turks* and Slaves.

M. Well, ſuppoſing all this, as long as it is his Right he ought to have it, let the Conſequence be what it will.

F. You have ſaid enough, I deſire no more; but I hope every true Proteſtant and *Engliſhman* will be of another mind if ever ſuch a caſe ſhould happen. But indeed it appears very ſtrange to me, that a natural Diſability, ſuch as Idiocy or Lunacy, ſhould be eſteem'd ſufficient in all Kingdoms to debar the next Heir from the Government, and yet that a Moral or Religious Diſability ſhould not have the ſame effect: and tho I grant that a King ought not to be rebelled againſt, or reſiſted, merely becauſe he is of a different Religion from that of his Subjects, for I was never for reſiſting King *James* merely upon that ſcore; yet it is another thing when a Prince is not actually poſſeſſed of the Throne, but is to be admitted to it upon ſuch Conditions as may appear ſafe for the Religion and Civil Conſtitution of a Kingdom. In this Caſe, if a Prince be certainly infected with ſuch pernicious Principles, either in relation to Religion or Civil Government, it is much otherwiſe: as for example, That no Faith is to be kept with Hereticks; That his own Religion is to be propagated by Arms, Blood, or Perſecution; That no Government can be ſafe for the Prince, or in which he can appear Great or Glorious, but as an abſolute Monarch: let ſuch a Prince be either a Chriſtian or a Mahometan, I think it would be a certain Ruin to a Kingdom to be oblig'd to receive ſuch a Prince, when they were morally ſure, that he would not only ſubvert their Religion, but deſtroy the very Profeſſors of it; and not only thoſe, but alter the Civil Conſtitution too, by turning it from a limited Kingdom, into an abſolute deſpotick Tyranny.

To conclude, I ſhall only deſire you to conſider, into what a Country your Prince of *Wales* is carry'd, and what Inſtructors he is like to have, and what Principles he will receive from them: and then pray tell me, if he continues there till he is a Man, what difference there will be between this young Prince bred up in ſuch a Religion, and ſuch Principles, and the ſame, if he had been carried away by Pirates to *Algiers*, as I at firſt ſuppos'd?

M. This is a very invidious Compariſon; for tho I do not approve of the Roman Catholick Religion, yet ſure there is a great deal of difference between that which profeſſes all the Articles of our Creed, and in which we of our Church own Salvation may be obtained, and the *Mahometan* Superſtition, which denies

denies that fundamental Article of our Creed, *viz.* That Jesus Christ is the Son of God. And as for Civil or Political Principles, I hope the King his Father will take care to have him instructed by some of those *English* Noblemen or Gentlemen who are now with him, in the Customs and Constitutions of the *English* Government, and wherein it differs from the *French*; as we read Chancellor *Fortescue* did Prince *Henry*, Son to *Henry* V. and I hope he will come over again to practise them in his own Country before he comes to be infected with the Arbitrary Principles of the *French* Government. But as for those of not keeping Faith with Hereticks, and propagating his Religion by Persecution; I doubt not but the King his Father will take care not to commit his Education to any of those who are infected with such Principles: and I am the more inclin'd to believe it, because it is very well known that his Majesty's Tenderness and Moderation in matters of Religion, and not persecuting any body for the Belief or bare Profession of it, as it was the greatest Cause of his late Declaration of Indulgence, so it was the main Original of all his late Misfortunes. Nor can I see any reason why a King by being a Roman Catholick, must necessarily be a Tyrant and a Persecutor, since you cannot deny but that we have had many good and just Kings of that Religion, and it is from those Princes that professed it that we derive our *Magna Charta*, and most of the Privileges we now enjoy.

Vid. *Fortescue* de Laud. Leg. Ang. in proem.

F. Tho I would not be thought to affirm, that the Romish Religion is every way worse than the *Mahometan*; yet this much I may safely affirm, that there is no Doctrine in all that Superstition, so absurd and contrary to Sense and Reason, as that of Transubstantiation, held by the Church of *Rome*, in which the far greatest part are certainly Idolaters, which can never be objected against the *Turks*: and therefore tho I will not deny but that a Man may be sav'd in the Communion of the Romish Church, yet it is not for being a Papist, but only as far as he practises Christ's Precepts, and trusts in his Merits, that he can ever obtain that favour from God.

But as for those evil Principles both in Religion and Civil Government, which you cannot deny but are now commonly believed and practised in *France*, and which you hope King *James* will take care that the Prince his Son shall be bred to avoid; I wish it may prove as you say: but if you will consider the Men that are like to be his Tutors and Instructors in matters of Religion, *viz.* his Father's and Mother's Confessors the Jesuits; and for Civil Government, those Popish Lords and Gentlemen of notorious Arbitrary Principles and Practices, who are gone over to King *James*; you will have small reason to believe, that there is ever a *Fortescue* now to be found among the *Englishmen* in *France*, or who is likely to instil into him those true *English* Principles you mention.

And tho I do not affirm, that every Popish Prince must needs be a Persecutor, yet since that wholly depends upon those Priests that have the management of their Consciences, shew me a Prince in *Europe* who has a Jesuit for his Confessor, and tell me, if he hath not deserv'd that Character.

But tho I am so much of your Opinion, that King *James* owes the greatest part of his Misfortunes to his Declaration for Liberty of Conscience; yet was it not so much to the thing it self, as to his arbitrary manner of doing it, by assuming a dispensing Power contrary to Law: and you may be very well assur'd by the little opposition which the late Acts met with for taking off the Penalties against Conventicles, and not coming to Church, in respect of all Dissenters, except the Papists, that King *James* might have as easily obtain'd a like Act to pass in respect of those also, as to the free Profession of their Religion, and having Mass in their Houses; which is more than the Papists will allow the Protestants in any Country in *Europe*. And therefore I must beg your pardon if I still find great reason to doubt whether King *James*'s Tenderness towards those that differ'd from him in matters of Religion, and the Indulgence he gave them, were purely out of Consideration of tender Consciences, and not rather thereby to destroy the Church of *England* establish'd by Law; since the Dispute began between King *James* and his Parliament, was not about Liberty of Conscience, but those Offices and Commands which the King was resolv'd to bestow upon the Papists, whether the Parliament would or not. And certainly there is a great deal of difference between a Liberty for a Man to enjoy the free Profession of his own Religion, and the Power and Benefit of having

having all the chief Imployments of Honour and Profit in the Commonwealth. But that the Indulgence of Popiſh Princes towards thoſe that diſſent from them in matters of Religion, may not always proceed from pure Tenderneſs and Compaſſion, appears from a Manuſcript Treatiſe of F. *Parſons*, (that great Jeſuit in Queen *Elizabeth*'s time) which I have been told was found in King *James*'s Cloſet after his Departure. This (if you can ſee it) will ſhew you, that the ſubtle Jeſuit doth there direct his Popiſh Succeſſor, in order to the more quiet introducing the Roman-Catholick Religion, to grant a general Toleration of all Religions, out of a like deſign. Thus did *Julian* the Apoſtate long ago tolerate all the Sects and Hereſies in the Chriſtian Religion, becauſe he thereby hoped utterly to confound and deſtroy it.

But as to what you alledge concerning *Magna Charta*'s being granted by Popiſh Princes, and that there has been many good Kings of that Perſuaſion; as I will not deny either the one or the other, ſo I deſire you to remember with what ſtruggling and great difficulties this Charter was at firſt obtain'd, and afterwards preſerv'd, tho it was no more than a Declaration of moſt of thoſe antient Rights and Liberties which the Nation had always enjoy'd. And you may alſo remember that they were Popiſh Princes, who more than once obtain'd the Pope's Diſpenſation to be diſcharged from thoſe ſolemn Oaths they had taken to obſerve thoſe Charters; and tho there have been divers good Princes before the Reformation, yet even the very beſt of them made the ſevereſt Laws againſt Proteſtants, and were the moſt cruel in their Perſecutions; witneſs King *Henry* IV. *Henry* V. and Queen *Mary*. And indeed, it is dangerous to rely upon the Faith of a Prince, who looks upon it as a piece of Merit to deſtroy all Religions but his own; and when he finds it cannot be done by Law, will not ſtick to uſe any arbitrary means to bring it about. To conclude, pray conſider whether the ſtrict obſerving or violation of *Magna Charta* and his Coronation-Oath, hath been the cauſe of King *James*'s Abdication. Pardon this long Diſcourſe, which your Vindication of the Opinion and Practices of Popiſh Princes hath drawn from me.

M. Pray, Sir, let us quit theſe invidious Subjects, which can do no good, ſince Princes muſt be own'd and ſubmitted to, let their Principles and Practices be ever ſo Tyrannical; and let us return again to the matter in hand. I will therefore at preſent ſuppoſe the Prince of *Wales* to have been either dead, or juſtly laid aſide. Now make it out to me how you can juſtify the placing the Prince and Princeſs of *Orange* in the Throne, when the Crown is really her Right after the Prince of *Wales*, and not her Husband's; as alſo the putting the Government ſolely into his hands: ſince this can no ways agree with the Act of Recognition to King *James* I. which you your ſelf cannot deny but ought to be obſerv'd, when it may be done without any apparent hazard or prejudice to the Proteſtant Religion, and the Conſtitution of our Government; which I think might have been as well, if not better ſecur'd, by letting it have gone in the right Line, than by placing the Crown upon the Head of a Prince, who, of the Blood-Royal by his Mother, yet being a Foreigner, is a mere Stranger to our Government and Laws, and has been bred up in *Calviniſtical* Principles; and upon that ſcore is not like to have any good Intentions towards the Government and Ceremonies of the Church of *England*, as appears by his late agreeing to aboliſh Epiſcopacy in *Scotland*, upon his accepting that Crown from the Presbyterian Convention.

F. If theſe be all the Objections you have to make againſt placing King *William* and Queen *Mary* on the Throne, I hope they will not be of any great moment to your ſelf, or any other conſiderate Man: for if upon the Abdication of King *James*, and the impoſſibility of determining your Prince of *Wales*'s Title (if it be one) a Regency was impracticable and unſafe for the Nation at that Conjuncture of time, when we wanted a King to hold a Parliament, as well to raiſe Mony to defend us againſt the Power of *France*, as alſo to make new Laws for the Eaſe and Reformation of the Kingdom; all which a Regent's acting without Royal Authority could never do, by the Conſtitution of this Kingdom: then there was a neceſſity of placing ſome body in the Throne, for the common Good and Safety of the whole Commonwealth; and I think you your ſelf cannot but acknowledge, that the Princeſs of *Orange* had an Hereditary Right to the Crown; and if her Highneſs had, the Prince her Husband alſo ought to govern

govern the Kingdom in her Right during her Life. And those who deny King *Henry* VII. to be Lawful King before his Marriage with the Princess *Elizabeth*, will yet grant he was so in her Right after his Marriage: and this has not been only the Custom in *England*, but also in other Kingdoms of *Europe*, as I can give you several Instances. For upon this ground it was that *Ferdinand* King of *Arragon*, by marrying with *Isabella* Queen of *Castile*, govern'd that Kingdom during his Life: so also *Anthony* Duke of *Bourbon* marrying with *Jane* Queen of *Navarre*, did in her Right administer the Government of that part of it, which was left unconquer'd by the *Spaniards*: and here at home *Philip* Prince of *Spain*, by his Marriage with Queen *Mary*, had certainly in her Right govern'd this Kingdom, and had enjoy'd something more than the bare Title of King, had he not by the Articles of Marriage, confirm'd by Act of Parliament, been expresly debar'd from it.

M. Admit all this to be true, yet this was only the Enjoyment of a bare Matrimonial Crown, and held no longer than during the Lives or Marriage with those Queens you mention. But pray tell me, how can the Convention, according to the antient Constitution of this Kingdom, justify the Settlement of the Crown, not only on King *William* during the Queen's Life, but for his own Life also, to the prejudice not only of his own Issue (if ever he have any by the Princess) but also of the Princess of *Denmark* and her Heirs?

F. I doubt not but to shew you, that this may be easily justify'd by the Constitution of the Kingdom, and former Precedents of what hath been done in the like Cases. First, As to the Constitution, I have already prov'd that upon the Deposition of a King (which is all one with a Forfeiture of the Crown) the Great Council or Parliament have taken upon them to elect or admit either the next Heir by Blood, or some Prince (tho more remote) of the Royal Family, to the Crown. Thus King *Henry* IV. upon the Deposition or Resignation of King *Richard* II. was plac'd in the Throne by the Archbishop of *Canterbury*, after the two Houses had voted and consented he should reign over them; tho I grant that by Right of Blood, *Edmund* Earl of *March* ought to have succeeded to it: but he being then a Child, was pass'd by unmention'd; Duke *Henry* being then powerful, and having deliver'd the Kingdom from the Tyranny and evil Government of *Richard* II. I shall pass by *Richard* III. because I own his Government to have begun by Usurpation, and to have been establish'd by the Murder of his Nephews. But as for *Henry* VII. I have already shew'd you, that the Parliament before his Marriage with the Princess *Elizabeth*, settled the Crown upon him, and the Heirs of his Body, by virtue of which he held it all his Reign: whereas there is no such thing done in the present Case of King *William*, since he hath only the Crown settled upon him during his own Life, with the remainder after his decease, without Issue by the Queen, to her, and not his Right Heirs; and as for such Children as he may have by her, it is agreeable to Reason, that he should hold the Crown by that which we call the Courtesy of *England* during his Life, and not from a King become a Subject to his own Children, in case he should desire to live here after her Majesty's decease, which I hope God will prevent.

M. I confess you have dress up a pretty plausible Title for King *William*; but yet all that you have said amounts to no more than this, That because other Kings have been Usurpers, he may be so too: for as to all the Instances you have brought, they have been only from Depositions or manifest Usurpations, both which our Laws have condemn'd as absolutely unlawful; as I have shew'd you hath been declar'd by two Acts of Parliament, against the Title of *Henry* IV. and his Descendants. But since you will not insist upon the Right of *Richard* III. I pass to that Act of *Henry* VII. which, as I told you before, so I must repeat it again, that it was done upon his suppos'd Right by Blood, as Heir to the House of *Lancaster*, and upon that pretence he claim'd the Crown as his Right, in his Speech to the first Parliament he call'd: besides, the Princess *Elizabeth*, the Queen *de Jure*, made no claim to the Crown, and so did tacitly resign it, which seem'd to make him *de Jure* as well as *de Facto* King; and if it were done otherwise, I look upon that whole Act as void in it self, because made by him before his Marriage with that Princess, and whilst he was an Usurper upon her Right. So that certainly it is no Argument that since Parliaments have acted illegally, therefore your Convention may do so too; for it is a known

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Maxim in our Civil Law, *à facto ad Jus non valet conſequentia:* therefore whatever they have done toward creating a good Title to King *William* in reſpect of the Queen his Wife, and his Iſſue by her, yet this no way excuſes the wrong done to the Princeſs of *Denmark* and her Iſſue, in caſe they ſurvive your King.

F. 'Tis very wonderful to me, to ſee how ingenious ſome Men are in finding faults with the preſent Settlement of things, tho ever ſo much for the beſt, if not done exactly to ſuit with their Humour, or Hypotheſis, when indeed there can no fault be juſtly found with it: for you agree that if the Queen hath a Right, King *William* hath ſo alſo, during his Life; and whether the Princeſs of *Denmark* and her Iſſue may ſurvive the King, is yet uncertain: but if either ſhe or they ſhould happen to ſurvive his Majeſty, yet ſince ſhe hath made no Claim or Proteſtation in the Convention, againſt the King's holding the Crown after the deceaſe of the Queen, I cannot ſee why this ſhould not paſs for a tacit Reſignation of her Right, as well as in the caſe of the Princeſs *Elizabeth* you but now mention'd.

But admit his preſent Majeſty, according to the late receiv'd Rules of Succeſſion, hath not a Title by Deſcent; yet according to thoſe Principles I have already laid down, he certainly has a Right to the Crown, from that inherent Power which I ſuppoſe doth remain in the Eſtates of the Kingdom, as Repreſentatives of the whole Nation, to beſtow the Crown one very Abdication, or Forfeiture thereof, on ſuch Prince of the Blood Royal, as they ſhall think beſt to deſerve it: and upon this account I conceive there is none of the Blood, that can ſtand in competition with his preſent Majeſty for Prudence, Valour, Moderation, and all other Royal Virtues; and therefore it is not at all to be wonder'd at, if the Convention hath in this Caſe exerciſed that Original Power, which the People reſerv'd to themſelves, at the firſt Inſtitution of Kingly Government in this Iſland.

Therefore I cannot but here take occaſion to vindicate his preſent Majeſty from thoſe Exceptions you have made againſt his Country, and Civil as well as Religious Principles. Firſt, As to his Country, 'tis true he is a Foreigner; yet that can be no Exception againſt his admiſſion to the Throne, ſince it was none againſt his Great Grandfather King *James:* and I doubt not but his Majeſty may underſtand as much, if not more of the *Engliſh* Conſtitution and Government, than his ſaid Grandfather did, when he firſt came to the Crown.

But as for his Principles in Religion, I cannot ſee any reaſon to ſuſpect him more inclinable to the Church-Government of *Holland*, than that of *England*, ſince he was bred up under a Mother, who was always firm to the Religion and Diſcipline of our Church; and ever ſince he was married to the Princeſs, he hath always ſhew'd a very great Reſpect to its Liturgy and Ceremonies, by his ſo conſtant frequenting his Princeſs's Chappel. So that beſides his Majeſty's Intereſt to maintain Epiſcopacy, as moſt agreeable to the Monarchy and antient Conſtitution of this Kingdom; it is likewiſe (if he were able) not in his power to deſtroy the Church of *England*, ſince the main Body of the Clergy, Nobility, and Gentry of this Nation is ſo zealous for its Preſervation; that if he had any ſuch Inclinations, it would not be eaſy for him to effect it, and he is too wiſe a Prince to let others perſuade him ſo viſibly againſt his own Intereſt, and having ſo late an Example before his Eyes, that it was King *James*'s Ruin to attempt it.

As for what you ſay of *Scotland*; 'tis true, Presbytery is for the preſent ſet up there, but it is uncharitable to impute this to the King's Inclinations: for 'tis notorious, that of them who call themſelves Epiſcopal in that Kingdom, the greater number did either out of prejudice to the Prince's Cauſe, or in contempt of his Power, refuſe to be choſen Members of the Convention; or elſe after they were choſen, did ſo far adhere to King *James*'s Intereſt, as to deſert it; as did my Lord *Dundee*, and many others, and by that means gave the Presbyterian Party an advantage to carry all things as they pleas'd: and this Party finding the King not well ſettled here, and the *Iriſh* in *Ireland* in Arms againſt him, took hold of that opportunity to put the aboliſhing of Epiſcopacy into the very Inſtrument of Government, and to preſs it upon him at a time when an unavoidable neceſſity and the obſtinacy of too many of the Epiſcopal Party forc'd him to conſent to it. Wherefore this no way ſhews his Majeſty's Inclinations to ſet up Presbytery even in *Scotland*; much leſs doth it prove he would

would ſet it up here, where the Circumſtances are quite different: for here the main Body of the People hate that Government, and will be ſo far from deſiring it, that they will never endure it. So that as to this, your fears of King *William* are as vain, as your hopes of King *James*.

I ſhall conclude with a few words in anſwer to your reply againſt thoſe Examples, wherein I have ſhewn you that the Crown hath always been under ſuch a Diſpoſition as the two Houſes of Parliament ſhall appoint; to which you have nothing elſe to object, but that their Admiſſion of *Henry* IV. to the Crown was condemn'd as unlawful by two Acts of Parliament, which I have already anſwer'd, by ſhowing you that thoſe Acts were obtain'd by *Richard* Duke of *York*, and *Edward* IV. his Son, by actual Rebellion, and by as great a force upon King *Henry* VI. as ever was uſed againſt King *Richard* II. by *Henry* IV. And as for the Statute of the firſt of *Henry* VII. you have found out a very eaſy way of anſwering it; by affirming that it was done whilſt he was an Uſurper, and before his Marriage, or that he had any right to be King. But by this way of arguing, no Act he ever paſſed would be good, ſince it is certain he did never take upon him to govern in right of his Queen, as all thoſe that have writ his Life do acknowledge; and therefore if the Parliament would then ſettle the Crown upon him and his right Heirs, without any reſpect to his Queen, or her Iſſue or Siſters, in caſe ſhe ſhould die childleſs, I cannot ſee why the Convention may not as well now ſettle the Crown upon King *William* and Queen *Mary* and their Iſſue, with remainder to himſelf for Life: eſpecially ſince he hath alſo another Title of his own to confirm it, *viz.* that of a Conqueror over King *James*, and our Deliverer from his Arbitrary Government.

M. I ſhall not go about to derogate from King *William*'s perſonal Virtues, which you ſo highly extol; only I wiſh I may not prove too true a Prophet, ſince that is not the main queſtion between us. I ſhall only take upon me to anſwer in the firſt place what you have urged on the behalf of King *William*'s pretence to the Crown as a Conqueror over King *James*, and Deliverer of the Nation; for whatſoever he may pretend to in reſpect of the latter, I am ſure he cannot juſtly pretend to the former; ſince ſure he can never have any right by Conqueſt, who expreſly ſets forth in his firſt Declaration, that he only came to obtain a Free Parliament, and to redreſs our Grievances. Much leſs can he be properly call'd a Conqueror, who never overcame his Enemy in any pitch'd Battel, but by falſe Stories made the King's Army deſert him; and then, when this was done, having forc'd the King to leave the Kingdom for fear, he has in the day of his Power by theſe means obtain'd the Crown: and as for a Deliverer, you muſt pardon me, if I cannot think him ſo, ſince I am not yet ſatisfied that the worſt of King *James*'s Oppreſſions ever deſerved that the Prince of *Orange* ſhould take the pains to come over to redreſs them.

And therefore your parallel between your King's Title, and that of *Henry* IV. and *Henry* VII. doth not at all agree, ſince both of them claim'd not ſo much by Conqueſt, or force of Arms, as by a pretended right of Inheritance, as you may ſee by both their Claims. And as for *Henry* IV. 'tis plain, he look'd upon his Title by deſcent of Blood (having been allow'd in Parliament) to be ſo good, that for the firſt ſeven Years of his Reign, he never thought it worth while to paſs an Act for the Settlement of the Crown upon himſelf, and his Iſſue: but for *Richard* III. and *Henry* VII. they were ſo far from owning their Titles to any Act or Declaration of Parliament, that they firſt clap'd the Crown upon their own Heads, and after they had done it, they immediately call'd their Parliaments; which tho they recogniz'd their Titles, yet did not make them Kings, but found them ſo: whereas the Convention has by their ſole Authority, made the Prince of *Orange*, and the Princeſs, King and Queen of *England*, to the prejudice of the right Heirs of the Crown.

F. I doubt not, but what I have already ſaid, may very well be defended, notwithſtanding the utmoſt you have now argued againſt it. In the firſt place, as to what you ſay againſt King *William*'s Title, as a Conqueror over King *James*, it is very trivial: for tho it is true, the Prince declar'd before he came over, that his coming was for no other end but to obtain a Free Parliament, redreſs Grievances, and to remove evil Counſellors from King *James*; yet that is ſtill to be underſtood, that the King would agree to thoſe reaſonable demands the Prince then made: for if by his own obſtinacy he would bring things to

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that paſs, as that inſtead of redreſſing thoſe Violations he had made upon our fundamental Laws, he raiſed an Army to ſupport himſelf in them; and when he thought this Army would not fight in his ſo bad a Cauſe, he then disbanded it, and by that, as well as the Deſertion of the Throne, owned himſelf vanquiſhed. Can any body deny the Prince of *Orange* a Right of making what advantage he could of his Succeſſes? And therefore I doubt not but that the Prince might, if he pleaſed, have taken upon him the Title of King immediately upon King *James*'s firſt Departure, and have ſummoned a Parliament to recognize his Title, as *Henry* VII. did after his Victory at *Boſworth-Field*; nor would this have made him a Conqueror over the Kingdom, ſince he never made war againſt it, but came to deliver it from Tyranny and Oppreſſion. Nor did *William* the Conqueror himſelf, by his Victory over King *Harold*, ever pretend to a Right by Conqueſt over the whole Kingdom, but only over the Eſtates and Perſons of thoſe who had fought againſt him, as I have fully proved at our tenth Meeting. Nor did *Henry* VII. in the firſt Speech he made to the Parliament after his taking upon him the Crown, claim a Right to it by Conqueſt over the Kingdom, as his own words were in that Speech you mention to his firſt Parliament, but only "by the juſt judgment of God in giving him the Victory over his Enemy in the Field;" and he then farther declared, "That "all his Subjects, of whatſoever State and Condition, ſhould enjoy their Lands "and Goods to them and their Heirs as they did before, except ſuch Perſons "who were to be attainted by Act of Parliament."

Nor is it any Objection againſt his Right by Conqueſt, that he obtained no Victory in a pitch'd Battel; ſince I never heard or read, that to make a Prince a Conqueror, it is neceſſary that ſo many thouſand Men ſhould be killed upon the ſpot: for admit the adverſe Prince againſt whom he fights will thro Cowardice deſert his Army, or that his Army will deſert him, either thro fear, or a ſenſe of the greater Juſtice of the adverſe Prince's Cauſe, or an Affection to his Perſon, ſo that it never comes to a Battel; yet it has been in all Ages looked upon as all one with a Victory, as I can ſhow you from ſeveral Examples in Hiſtory; and particularly in *Plutarch*, concerning *Pyrrhus* King of *Epirus*, who making war againſt *Demetrius* then King of *Macedon*, and both Armies being incamped near each other, the Army of the latter forſook him and went over to *Pyrrhus*, as well out of hatred to him, as eſteem for his Enemy: ſo that *Demetrius* being forced to ſteal away in diſguiſe, *Pyrrhus* thereupon was immediately in the field proclaimed King of *Macedon*. And I doubt not but the Prince of *Orange* might have done the ſame, had it not been for his great Moderation, and leſt it might give his Adverſaries occaſion to traduce him, that he came over for no other end than to drive the King out of his Kingdom; and therefore he choſe rather to owe the Crown to the free Act of the Nation, than to his Right by Conqueſt over King *James*. But yet I do not think he hath at all loſt that Right, tho he doth not think fit (for fear of giving offence) to inſiſt upon it; and therefore certainly the Convention might very well juſtify the ſettling the Crown upon his Highneſs during his Life, not only as a Conqueror over King *James*, but a Deliverer of the Nation from his Oppreſſion, tho the Prince was pleaſed to accept it upon thoſe Terms expreſſed in the late Declaration of the Convention, and upon his free Promiſe to preſerve our Religion, Laws, and Liberties, which he has ſince alſo confirmed by his Coronation-Oath.

In vita Pyrrhi.

But as to what you ſay, that the Prince made the King's Army deſert him, and wrought the People into Hatred of his Perſon by lying Stories and mean Arts, it is altogether untrue; ſince I know of no Reports he made of the King, or his Government, but what are in his firſt Declaration: and that is certainly true in every part of it, as has been juſtified by the expreſs Declaration of the Convention in every Particular, except that concerning the Prince of *Wales*, which I confeſs is ſtill left undecided; becauſe (as I have already proved) it is impoſſible to give any certain judgment in it, unleſs the Witneſſes as well as the Infant himſelf could be brought over hither. Nor doth the Prince in his ſaid Declaration ſay any more concerning that Buſineſs, "than that there are violent Suſpicions that the pretended Prince of *Wales* "was not born of the Queen." But for the Report of the ſecret League with *France*, for the Extirpation of the Proteſtant Religion, as there is no ſuch

thing in his Highneſs's Declaration, ſo the ſpreading of it cannot be laid to his charge, ſince he never gave it out as I know of; yet there are certainly great Preſumptions, and too much cauſe of Suſpicion that it may be ſo, as I proved at our laſt Meeting. But tho you will not allow the Prince the Title of our Deliverer, yet I am ſure the greateſt part both of the Clergy and Laity of the Church of *England* were once of Opinion, that King *James*'s Violations both upon our Religion and Laws were ſo great, that nothing could preſerve the Kingdom from a total Subverſion in its eſtabliſhed Religion and Civil Conſtitution, but his Highneſs's coming over; and moſt of the Biſhops were of that Opinion, who, now the Government is ſettled, refuſe to take the Oath of Allegiance to their preſent Majeſties.

But to anſwer what you ſay, that the manner of *Henry* IV's, and *Henry* VII's coming to the Crown, doth not at all agree with the Caſe of King *William*, becauſe they claimed by Right of Blood, which you ſay King *William* cannot do; that is not ſo in reſpect of the Queen, who has certainly a Right to ſucceed her Father by Right of Blood, in caſe the Prince of *Wales* be not the true Son of the Queen; and until he can be proved ſo, we muſt at preſent look upon him as if he were not ſo at all. So that the Convention hath done no more in ſettling the Crown upon the King during his Life, than what the Great Council of the Kingdom have frequently done before upon other Vacancies of the Throne, as I have proved from the Examples of *William Ruſus* and *Henry* I. King *Stephen*, King *John*, and *Henry* III. And it is very hard to ſuppoſe the whole Nation to have been guilty of Perjury and Treaſon, upon their ſwearing to, and fighting for thoſe Princes after they were ſo ſolemnly elected, crowned, and inveſted with the Royal Power. But as for *Edward* III. his firſt and beſt Title was from the Election of the Great Council of the Kingdom, who I doubt not but if they had found him unworthy of the Royal Dignity, by reaſon of Folly or Madneſs, or tyrannical Principles, would have ſet him aſide, and have made his younger Brother King; a Protector to govern in the King's Name, with Royal Power, having never been known in *England* till the Reign of *Henry* VI. But as for *Henry* IV. notwithſtanding his Claim by Right of Blood, I have already proved that the Parliament, by their placing him in the Throne, did not at all allow it; nor is any ſuch Right recited in the Act of the 7th of *Henry* IV. which by the Crown is entailed upon that King and his four ſucceſſive Sons. And tho it is true *Henry* VII. alſo claimed the Crown by Right of Inheritance, in his Speech in Parliament, yet they were ſo far from allowing it, that they do not ſo much as mention it in that Act of Settlement, which, as I have recited, they made of it upon that King and the Heirs of his Body. And therefore I think I may ſtill maintain, that the Convention have done nothing in the preſent Settlement of the Crown, but what hath been formerly done upon every Vacancy of the Throne, either by Depoſition or Reſignation of the King, or Abdication, or Forfeiture of the Crown; as in the preſent Caſe of King *James*, in which the Convention have done no more than exerciſed that Power which has always been ſuppoſed to reſide in the great Council of the Kingdom, of ſettling the Crown upon ſuch a Prince of the Blood Royal as they ſhall think beſt to deſerve it.

Thus much I have ſaid to preſerve the antient Right of the Great Council of the Nation. But to put all this out of diſpute, I have been credibly informed that the Princeſs of *Denmark* her ſelf did, by ſome of her Servants in both Houſes, as well of the Lords as Commons, declare, upon a great Debate that aroſe about ſecuring her Highneſs's Right to the Crown immediately after her Siſter the Queen, that her Highneſs had deſired them to aſſure the Convention, that ſhe was willing to acquieſce in whatever they ſhould determine concerning the Succeſſion of the Crown, ſince it might tend to the preſent Settlement and Safety of the Nation; which I think is a better Ceſſion of her Right to his preſent Majeſty, than any you can prove that the Empreſs *Maud* made to her Son *Henry* II. or than the Counteſs of *Richmond* ever made to her Son *Henry* VII.

M. You have often talked of this Forfeiture, and extravagant Power of your Convention, by which you ſuppoſe they are not obliged to place the Crown upon the Head of the next Heir by Blood, which I ſhall prove to be a vain Notion: for if there be an abſolute Forfeiture of the Crown, the Government would

would have been abſolutely diſſolved: for ſince there is no legal Government without a King, if the Throne were really vacant, and that the People might place whom they pleaſed in it, yet the Convention can have no power to do it as their Repreſentatives; ſince upon your ſuppoſed Diſſolution of the original Contract between the King and the People, there was an end of all Conventions and Parliaments too. And therefore if a King could have been choſen at all, it ought to have been by the Votes of the whole Body of the Clergy, Nobility, and Commons, in their own ſingle Perſons, and not by any Council or Convention to repreſent them; ſince the Laws for reſtraining the Election of Parliament-men only to Freeholders, are, upon this ſuppoſed Diſſolution of the Government, altogether void; and if you ſay ſuch a way of Election is now impoſſible, I ſhall do ſo too: but however, it plainly ſhews the Abſurdity of ſuppoſing a King could ever now be fairly elected, were all the Blood Royal totally extinct.

As for what you ſay concerning that Ceſſion which the Princeſs of *Denmark* made of her Right to the Crown, I never heard any thing of it before; but admit it were ſo, this could only ſerve in relation to her ſelf, and ſhe could not give up the Right of her Brother the Prince of *Wales*, no nor that of her own Children, if God ſhould give her any.

F. This Objection concerning the total Diſſolution of the Government, proceeds from a want of your Conſideration of what the antient Government of *England* was, not only before, but a good while after your pretended Conqueſt; which was not a ſettled hereditary Monarchy, but a teſtamentary or elective Kingdom, where the Kings, being often recommended by the Teſtament of the precedent King, were choſen out of the Royal Family, tho not according to the Rules of Succeſſion now in uſe: and therefore in all ſuch Governments, it is very well known, that there was, at the firſt Inſtitution of Kingly Government among them, a great Council or Aſſembly of Eſtates of the whole Kingdom appointed, who upon the Death of the laſt King and Vacancy of the Throne, were ſtill to meet of courſe to appoint a Succeſſor, which was commonly one of the Sons of the laſt King, or at leaſt ſome other Prince of the Royal Blood. Thus it was till of late years in *Denmark* and *Sweden*, and ſo it was antiently in *France* during the Succeſſion of the firſt Race; as alſo in *Spain* during the Government of the *Vandals* and *Gothick* Princes; and ſo it likewiſe was in *England* during the whole Succeſſion of our *Engliſh-Saxon* Kings, and ſo I have alſo proved it continued till *Edward* I. And tho ſince his time that the Crown hath been claimed by Right of Inheritance, yet in all times precedent it is apparent, that the great Council of the Kingdom, upon the Death of every King, aſſembled by their own inherent Authority, to conſider whom they ſhould place on the Throne, which they then looked upon as vacant. And therefore tho I grant in the caſe of *Edward* I. the Parliament did not only ordain him Succeſſor to his Father, but alſo recognized his Right by Blood; yet for all this they ſtill retained their antient power of meeting without Summons from the King, he being in the *Holy Land*, and they not knowing whether he was alive or dead. So that it is a falſe Aſſertion to affirm, that there can be no Civil Government without a King, ſince in all thoſe Vacancies of the Throne, it is plain, the Government devolved of courſe upon the great Council of the Nation. And tho it is true there can be now no Parliament without a King, according to the preſent Notion and Acceptation of that Term, yet before that word was ever in uſe (which is no older than about the middle of the Reign of *Henry* III.) it is plain, that our great Councils often met by their own inherent Authority without any King, and preſerved the Peace of the Kingdom till a new King was either choſen or declared. And tho 'tis true the Crown hath been long enjoyed by thoſe who have claimed by Inheritance, yet there is no reaſon for all that, if the like Caſes ſhould fall out as have done in former times, why the Government ſhould devolve to the mixed Multitude now, any more than it did then; ſince it may be as well ſuppoſed, that the ſame tacit Contract ſtill continues of maintaining the original Conſtitution of our great Councils, which I have proved to be as antient as Kingly Government it ſelf. And tho perhaps the Form of chuſing or ſending theſe Repreſentatives of the Nation may have been altered in divers Particulars by former Laws or received Cuſtoms, yet this is nothing to the purpoſe,

as long as the thing it ſelf remains the ſame in ſubſtance as it was before; for it can never be thought to have been the intent of the People who eſtabliſhed this Form of Government, that upon the Extinction of the Royal Family, the Government ſhould be ſo quite diſſolved, as that it ſhould be left to the Multitude to chuſe what Form of Government they ſhould think fit, or elſe fall into Anarchy and Confuſion.

Therefore to conclude, I wiſh you would be perſuaded to own this Government as it is now eſtabliſhed, and to take the Oath of Allegiance which is enjoined by the Declaration of the Convention, who are the only proper and legal Judges we can now have of conferring the Rights of thoſe to whom our Allegiance is due. And if in caſe of a Diſpute about the right Heir of the Crown, the People of this Nation were not all obliged to ſtand to the Deciſion of this Aſſembly, we muſt neceſſarily fall together by the ears, and fight it out as they do in the *Eaſt-Indies*; where, upon the Death or Depoſition of a King, he has ſtill the Right who can conquer his Competitors in Battel.

M. Well, I wiſh there were not ſomething very like it practiſed here of late; for I think you will grant, that if the Prince of *Orange*'s Party had not prevailed over the King's, the Convention would never have placed the Crown upon his Head.

But I muſt beg your pardon if I cannot agree to your Propoſals of taking the new Oath of Allegiance to King *William* and Queen *Mary*, ſince I have already taken the Oaths of Supremacy and Allegiance to King *James*; and I do not believe that any Power on Earth can diſengage me from that Oath as long as he and his Son the Prince of *Wales* are alive: For as to your Doctrine of Abdication or Forfeiture, they are too hard for my Reaſon to underſtand, or for my Conſcience to comply with; and therefore it is all one to me whom your Convention places on the Throne, ſince I am very well ſatisfied that none but the King can have a Right to it.

F. I wiſh I could ſee ſome better Reaſons for this Opinion of yours, than thoſe you have already given; for if you could convince me that the Nation hath done any thing in this Revolution, which cannot well be juſtified by the antient Cuſtoms and Conſtitution of the Kingdom, I ſhould come over to your Opinion. But if King *James* has truly abdicated or forfeited the Crown (as I hope I have ſufficiently made out) and that your ſuppoſed Prince of *Wales* either is not really, or elſe cannot now be proved to be the true Son of the Queen, by reaſon of thoſe Obſtacles and Impediments I have ſhewn you; I cannot ſee any thing to the contrary why you ſhould not be wholly free, and diſcharged from your former Oath of Allegiance to King *James*: So that King *William* and Queen *Mary* being now placed on the Throne, your Allegiance to King *James* and the ſuppoſed Prince of *Wales* is lawfully determined. Pray tell me therefore why you cannot take this new Oath of Allegiance, ſince you have the Judgment and Declaration of the Convention, which is the Repreſentative of the whole Nation, to juſtify you in ſo doing.

M. I muſt tell you once again, that I think Allegiance is not only due to the King by the Law of the Land, but alſo by the Laws of God and Nature, and conſequently cannot be diſſolved by any ſubſequent Judgment of a Convention, who are and always ought to be Subjects to him and his right Heirs, as long as they are in being; and therefore I ſhould not allow the Prince and Princeſs of *Orange* for ſuch, were the King now actually dead. Nay, if King *James* himſelf had ſtaid in *England*, and had been ſo over-awed by fear, as to have declared in Parliament, that the Prince of *Wales* was not his true and lawful Son born of the Queen, and had thereupon ſettled the Crown upon the Princeſs of *Orange* as his Heir apparent; I could never have thought my ſelf obliged to ſwear Allegiance to her, or to own her for my lawful Sovereign, as long as the Prince of *Wales*, or the Heirs of his Body, are in being: ſince I am very well ſatisfied, and that by unexceptionable Proofs, that he is really the Son of the King and Queen; for I think I have ſufficiently made out by ſeveral Declarations of Parliament, that the Hereditary Right of the Crown can never be defeated nor altered by any Statute whatſoever, but according to the Act of Recognition of King *James* I's Title (which I have already urged) the Crown ought to deſcend to the next Heir by Blood, according to the Rules of Deſcent I have now laid down.

F. I cannot but admire your Obſtinacy in this matter, which proceeds from your old Error of believing, that there is a Natural or Divine Right of Succeſſion to Crowns different or abſtracted from the Civil and Political Laws and Conſtitutions of particular Kingdoms; which I think I have already confuted, by ſhewing you that there was no ſuch thing in nature as a Patriarchal Right in *Adam* or *Noah*, or their Heirs, nor yet to any other King as their Aſſigns or Repreſentatives. And therefore tho I grant that Allegiance to every lawful King is due by the Laws of God and Nature, yet who that King is, or who is to be his lawful Succeſſor in limited or mixt Monarchies (as ours is) can only be determined by the Aſſembly of Eſtates of the whole Nation: for notwithſtanding all you have ſaid, there is a very great Difference between the legal Rights of Princes, and the natural Rights of Fathers and Husbands, which yet may ceaſe and be diſſolved in ſome Caſes, as I have already ſufficiently proved. Yet I think it is evident, that not only a legal Title and legal Authority may be parted from each other, but that legal Titles and legal Authority may be rightfully ſeparated from the Perſons to whom they were once due, which natural Rights can never be. A King may ceaſe to be a King, tho a Father can never ceaſe to be a Father; for Laws have not the ſame force and power that Nature has. Now all Men confeſs this Separation may be made by a voluntary Reſignation, as alſo by Conqueſt in a juſt War; both which will diveſt ſuch a Prince of all Right and Authority to govern; and if it may be done by either of theſe ways, his Right and Authority is not inſeparable from his Perſon. Since then there is no natural inherent Property in Lands or Kingdoms, but what proceeds from the particular Laws of each Kingdom or Commonwealth; therefore whoever the ſupreme Power, appointed by the Conſtitution of ſuch Kingdoms, ſhall judge or determine to have a true and legal Right to the ſame, are to be owned and eſteemed as the true legal Owners and Poſſeſſors thereof, by all the Subjects: ſo that if a King can part with his Kingſhip, it is poſſible he may loſe it too, ſince there are more ways than one of parting with that which may be parted with. If then a voluntary Reſignation of a Crown, or Conqueſt in a juſt War, can give another Prince a juſt Title to it, I cannot ſee why a tacit Abdication, or Forfeiture of a Crown, upon a limited King's total Breach of the fundamental Laws and Conſtitution of the Kingdom, ſhould not as much diſcharge all the Subjects of their Allegiance to him, and alſo give the great Council, as the Repreſentative of the Nation, a like Right of ordaining a Succeſſor upon ſuch a Vacancy of the Throne; and who being once placed therein, all the People of the Nation ought to pay the ſame Allegiance to him, as they did to his Predeceſſors.

E. L. R. *p.* 27.

But as for the latter part of your Suppoſition, that the right Heirs of the Crown by Blood muſt always neceſſarily ſucceed to it, that is likewiſe founded upon two very falſe Principles: firſt, That a lineal hereditary Succeſſion to the Crown is eſtabliſhed by the fundamental Laws and Cuſtoms of the Kingdom. Secondly, That the Succeſſion to it cannot be limited by the Parliament or great Council of the Nation. The former of which Suppoſitions I have confuted at our laſt Meeting, and as for the other, you cannot deny but the Crown has been frequently ſettled and limited by Act of Parliament, contrary to the common Rules of Succeſſion, as hath been ſufficiently proved by the Statute above-mentioned of *Henry* VII. as alſo by thoſe ſeveral Acts concerning the Succeſſion in *Henry* VIII's time; and ſo it continues at this day by the Statute of the 13th of Queen *Elizabeth*, whereby it is declared "Treaſon, during "the Queen's Life, for any Perſon to affirm that the Queen and Parliament "had not power to make Laws to limit and bind the Deſcent and Inheritance "of the Crown; or that this Act was not of ſufficient force to bind, limit, "and govern all Perſons, their Rights and Titles, that in any way claim any In-"tereſt or Poſſibility in or to the Crown of *England* in Poſſeſſion, Remainder, "Succeſſion, Inheritance, or otherwiſe howſoever; and every Perſon ſo hold-"ing or affirming, after the Deceaſe of the Queen, ſhall forfeit all his Goods "and Chattels." So that I can ſee no juſt reaſon you can have to refuſe ſwearing Allegiance to their preſent Majeſties and their Succeſſors, according to the Limitation in the ſaid Act.

Chap. 1.

M. Well, I ſee it is in vain to argue theſe Points any longer with you, ſince it would only force me to repeat the ſame things over again, which will neither

ther edify you, nor my ſelf; only give me leave to tell you thus much, that the laſt part of your Argument (which is the only thing that is new in all your Diſcourſe) is founded upon a very wrong ground: for tho I ſhould grant, as I do not (ſince I think this Act you laſt mentioned is expired) that the Crown may be limited or intailed by Act of Parliament, contrary to the due Rules of Succeſſion; yet even that will not hold in reſpect of the preſent Settlement thereof by the Convention, upon the Prince and Princeſs of *Orange* for their two Lives: ſince you cannot but know that no Parliament yet was ever ſo preſumptuous as to take upon them to ſettle or limit the Succeſſion of the Crown, without the Conſent of the King or Queen then in being. Whereas the preſent Settlement was firſt made by the Convention, upon the making of the Prince and Princeſs King and Queen; tho I grant it was afterwards confirmed by another pretended Act, whereby all Princes that are or ſhall be *Roman* Catholicks when the Crown ſhall deſcend unto them, are debarred from their Right of Succeſſion. This, tho I grant to be made after the Prince and Princeſs of *Orange* took upon them the Title of King and Queen; yet ſince that Statute was not made in a Parliament called by the King's Writs, but in a Convention, who owe their meeting wholly to the Prince of *Orange*'s Letters, it is not only void in reſpect of the Subject-matter, but alſo in the manner of making it; and therefore I cannot believe that the Throne was ever vacant. And I have as little reaſon to be ſatisfied that the Prince and Princeſs could be lawfully placed therein, or that all *Roman* Catholick Princes can ever be barred from their Right of Succeſſion whenever it may fall to them.

F. If this be all you have farther to object, I think I can eaſily anſwer it; for in the firſt place, I have already told you, that the Convention did not take upon them to create or make any new Form of Succeſſion to the Crown, but only to declare that the Prince and Princeſs of *Orange* are rightful and lawful King and Queen of *England*: for upon ſuppoſition of King *James*'s Abdication of the Crown, and that the Prince of *Wales* cannot be taken for the lawful Son of the King till he can be brought over, and that his Legitimacy be duly proved, it muſt till then certainly be their Right, and no others: and as for King *William*'s holding the Crown during his own Life, I have already told you it was not done without the tacit Conſent of the Princeſs of *Denmark* her ſelf, tho I doubt not but it may alſo very well be juſtified upon thoſe Suppoſitions of the Forfeiture of the Crown by King *James*, and the Conqueſt the Prince of *Orange* made over him; which are ſufficient in themſelves to bar any legal Claim of thoſe that either are or may pretend to be right Heirs.

But as for the other part of your Objection, whereby you will prove, that Popiſh Princes cannot be excluded from the Succeſſion, becauſe the Act was made not in a Parliament, but a Convention: This wholly proceeds from your want of Conſideration, that at the firſt Inſtitution of the Government, and long after, whilſt the Kingdom continued Elective, there was no difference between a Great Council or Convention, and a Parliament; for pray call to mind the four firſt Great Councils after your Conqueſt, (reckoning that for one wherein King *William* I. was elected or declared King) whether it was poſſible for thoſe Councils to be ſummoned in the King's Name, before any body had taken upon themſelves the Title of King. The like I may ſay in the caſe of King *John*, and *Henry* III. and that this continued after the Succeſſion was ſettled in the next Heir by Blood, appears by that Great Council that was ſummoned after the Death of *Henry* III. which recognized or ordained his Son Prince *Edward* to be his Succeſſor. So likewiſe the Parliament that depoſed King *Edward* II. ſat both before and after his Depoſition and Reſignation, and elected his Son *Edward* III. to be King, and appointed his Reign to begin from the time of their Election, and not of his Father's Reſignation of the Crown: ſo alſo upon the Depoſition of King *Richard* II. the ſame Parliament that depoſed him, placed *Henry* IV. in the Throne; and tho the Writs of Summons were in the Name of King *Richard*, and they were never re-ſummoned or new-elected in the Reign of *Henry* IV. yet did they ſtill continue to ſit, and made divers new Acts, and repealed ſeveral old ones; all which hold good to this day.

Vid. Rot. Parl. 1 Henry IV.

And that the Parliament are the only proper Judges of the Right of Succeſſion even without the King, you your ſelf muſt grant, or elſe how could they declare in 39th of *Henry* VI. that the Claim which *Richard* Duke of *York* made

to

to the Crown could no way be defeated? And certainly if that unfortunate Prince, King *Henry* VI. had had ſufficient Power or Intereſt in that Parliament, they might and would have adjudged the Duke of *York*'s Claim to have been groundleſs, and contrary to Law, and then I believe it would ſcarce have ever been heard of again.

But to make it out beyond exception, that a Convention may become a Lawful Parliament, tho never called by the King's Writs, when the King's Authority and Preſence come once to be added to, and joined with it, appears by the firſt Parliament of King *Charles* the Second; which tho ſummoned in the Name of the Keepers of the Liberties of *England*, yet nevertheleſs continued to ſit and make ſeveral Acts which hold good to this day: and I doubt not but they might have made the like Limitations of the Crown in reſpect of *Roman* Catholick Princes, as the Convention have now done, and that it would have held good at this day, ſince it is ſo much for the Security of our Religion, Liberties and Properties, that it ſhould be ſo; ſince we have found by dear-bought Experience in the Reigns of the four laſt Kings of the *Scotiſh* Line, that ſtill as they began to favour the Popiſh Religion and Intereſt in this Kingdom, ſo did the Proteſtant and true *Engliſh* Intereſt, in reſpect of our Religion, Liberties and Properties, ſtill decline, till at laſt they were like to be totally ruined and extirpated: for that reſtleſs and dangerous Faction very well know, that there is no means poſſible for them to re-eſtabliſh their Superſtition among us by due and legal Methods, but only by introducing Arbitrary Power, taking away Parliaments, or elſe making them wholly to depend upon the King's Will, as we ſee was laboured, and almoſt effected in the Reigns of the two laſt Kings. And therefore I cannot but believe that the preſent Parliament has not only acted wiſely, but alſo legally, to enact that for the future no Prince, who is actually a *Roman* Catholick, ſhall ſucceed to the Crown, tho he be next Heir by Blood.

M. I muſt ſtill tell you, I am as little ſatisfied with your Suppoſitions of the Forfeiture of the Crown by King *James*, and the Conqueſt of the Prince of *Orange*, as I am with your Inſtances out of Hiſtory concerning the Power of the Great Council's meeting and chuſing a King by their own inherent Authority; ſince, beſides that it was done by Uſurpation in thoſe rough and unſettled times, I believe if the antient Writs of Summons were now in being, you would find that they were called by thoſe Uſurpers, tho not by the Title of Kings. But I defy you to ſhow me, ſince the Reign of *Edward* the Firſt, any Parliament ever called without the King's Writs of Summons; and tho upon the Depoſition of *Edward* and *Richard* the Second, the Parliaments you mention might continue to ſit and tranſact publick Buſineſs, yet was it during a plain Uſurpation upon thoſe Princes, whom you your ſelf muſt grant to have been unlawfully depoſed: And therefore we find upon the Parliament-Roll of the 21ſt of *Richard* the Second, that an Act of the 1ſt of *Edward* the Third, confirming the Judgment given upon the two *Spencers*, was not only repealed in Parliament, but declared to be unlawful, becauſe *Edward* the Second was living, and true King, being impriſoned by his Subjects at the time of that very Parliament of 1 *Edward* III. But as for your laſt Inſtance of a Convention's declaring it ſelf a Parliament in the Reign of King *Charles* the Second, there is a great deal of difference between them and the preſent Convention, ſince they did not take upon them to declare or make a King (as this Convention has done) but only to recognize him to be their Lawful Sovereign; which (as I have already told you) being that which was their Duty to do, they might very well juſtify, though they were not ſummoned by the King's Writs: but however all their Acts were looked upon as made without Legal Authority, and therefore were confirmed in the firſt Legal Parliament of King *Charles*'s Reign.

Rot. Parl. n. 64. 21 Ric. II.

But as for the Authority of the Statute of the 13th of *Elizabeth*, whereby you would prove, that the Parliament has at this day power to alter or limit the Succeſſion of the Crown; beſides that ſuch an Act being againſt the fundamental Rules of Succeſſion, was void in it ſelf; yet if you pleaſe to look upon the Act in *Raſtal*'s Statutes, you will there find it was only made to ſerve a preſent turn, and to keep the Queen of *Scots* and her Party from enterprizing any thing againſt Queen *Elizabeth*: and therefore it is there only declared to

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be Treaſon during the Queen's Life for any Perſons to maintain, that the Queen could not, with the Authority of the Parliament, limit the Succeſſion of the Crown: and as for the laſt Clauſe, that makes it Forfeiture of Goods and Chattels to maintain the contrary after her Deceaſe; this was made to ſtrengB. H. S. *p.* 40. then and confirm the former part of the Statute, which was a Proviſion and Security againſt ſuch Pretences and Practices as had been lately made againſt her by the Papiſts, on the behalf of the Queen of *Scots*'s Title. And this Clauſe could not take effect after her Death, but was added to preſerve Queen *Elizabeth*'s Memory from being defamed after her Deceaſe, or being ſlanderouſly charged with the heinous Crime of uſurping the Crown; which muſt have been the inevitable Conſequence of affirming, that ſhe and her Parliament could not limit the Succeſſion. For to confeſs the truth, I think Queen *Elizabeth*'s beſt Title was by Act of Parliament, ſince her Legitimacy might be juſtly queſtioned, by reaſon that her Mother's Marriage was declared unlawful by the 28th of *Henry* the VIIIth, and ſhe was as good as declared illegitimate by her Father in that very Act that ſettled the Crown upon her. But that this Statute of the 13th of Queen *Elizabeth* is now looked upon as expired, appears in *Pulton*'s, and all other late Collections of the Statutes ſince her time; wherein the Title of the Statute is barely mentioned with *E X P.* immediately following it, to ſhew it is looked upon as expired. So that you are miſtaken to affirm that the Convention has done nothing in the late Limitation of the Crown, but what may be juſtified from that Statute; therefore if it be not Law at this day, I think they had no Authority to alter the Succeſſion of the Crown from the right Line, let them be of what Religion they would.

F. I ſee you do all you can to evade the Force of my Authorities from Hiſtory and direct Matter of Fact; and therefore as to what you ſay, that thoſe were rough and unſettled Times, and therefore no Precedents to be drawn from thence, this is to beg the Queſtion: for what could be the Law concerning the Succeſſion of the Crown for the firſt hundred and fifty Years after the Conqueſt, but the conſtant Uſage of the Great Council of the Nation, as low as the Reign of *Henry* the Third? And it is a bold Aſſertion to accuſe the whole Nation of Perjury, and Rebellion againſt their Lawful Kings, during all thoſe Succeſſions I have now inſtanced in: nor have you any thing to ſay againſt thoſe Parliaments that met in the 1ſt of King *Edward* III. and *Charles* II. but that their Meeting was lawful, becauſe it was only to recognize thoſe Kings, and not to make them; which is indeed to beg the Queſtion, ſince you cannot deny but thoſe Parliaments are held for good, notwithſtanding they were not called by the King's Writs. But as for making a King, the preſent Parliament have not taken upon them to do it, ſince they do not in the Act for the Succeſſion elect King *William* and Queen *Mary* to be our Lawful King and Queen, but only declare or recognize them to be ſo, upon ſuppoſition that the Prince of *Wales* is either an Impoſtor, or elſe his Legitimacy impoſſible to be tried and determined by them. Nor are your Objections material againſt the Authority of thoſe Acts of Parliament which were made in the 1ſt of King *Henry* IV. and *Charles* II. which were never ſummoned by thoſe King's Writs. For as to the firſt of thoſe Inſtances, moſt of thoſe Acts of *Henry* IV. ſtand good at this day, without ever being confirmed by any ſubſequent Parliaments. And tho I grant that the publick Acts made in the firſt of King *Charles* II. were confirmed in the next Parliament of that King, yet this does not prove that they would have been void without it; ſince divers private Acts paſſed in that Parliament, which were never confirmed in any other, and yet are held for good: as particularly an Act of that Parliament for making the Church of *St. Paul's Covent-Garden* Parochial. And this Act, tho never confirmed, was yet adjudged to be in force by the Lord Chief Juſtice *Hales*, and the reſt of the Juſtices of the King's Bench, in a caſe concerning Rate-Tythes between the Miniſter and ſome of the Pariſhioners of the ſaid Pariſh. And that not only all the private Acts of that Parliament, but ſome publick ones alſo, tho never confirmed in the following Parliament of the 13th of King *Charles* II. are yet held good in Law, appears by theſe that follow, *viz.*

12 Car. II. *c.* 3. 1. *An Act for Continuance of Proceſs, and judicial Proceedings, continued.*

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By which all Writs, Pleas, Indictments, *&c.* then depending, were ordered to ſtand and be proceeded on, notwithſtanding want of Authority in the late Uſurpers. And therein it was farther ordained, that Proceſs and Proceedings in Courts of Juſtice ſhould be in the *Engliſh* Tongue, and the general Iſſue be pleaded, till *Auguſt* 1. 1660. as if the Acts made during the Uſurpation, for that purpoſe, had been good and effectual Laws.

And upon this foot only ſtand many Fines, Recoveries, Judgments, and other Proceedings at Law had and paſſed between *April* 25, 1660. and *Auguſt* 1. 1660.

2. *An Act for conforming and reſtoring of Miniſters.* 12 Car. II. c. 17.

This Act is uſually to this day ſet forth and pleaded in *Quare impedit*, tho it was ſaid to be refuſed upon Debate to be confirmed in the Houſe of Commons, 13th of *Car.* II. when divers other Acts of the ſame time were confirmed; 13 Car. II. c. 17, *&c.* yet both theſe Acts, having no other Authority but from that Convention (as you call it) have been judged and conſtantly allowed to be good Laws for above theſe thirty Years.

Nor is what you have now ſaid true, to prove the Statute of the 13th of Queen *Elizabeth* (whereby the Crown is declared capable of being limited by Act of Parliament) to be now expired; ſince it is plain, by the purport of the Act, that it is declaratory of the former Laws of *England*, made in King *Henry* VIIth and VIIIth's, and other Kings Reigns, whereby the Succeſſion of the Crown had been frequently entailed upon thoſe who were not the next Heirs by Blood: and tho the Queen be only mentioned in it, yet it certainly as much concerns her Succeſſors and all future Parliaments, as the Oath of Allegiance, in which the Queen is only mentioned, does all future Kings and Queens; and it is not only made Treaſon during her Life, but alſo there is a loſs of Goods and Chattels to be inflicted on all thoſe who ſhall maintain after her Deceaſe, that the Queen and Parliament had not power to limit the Succeſſion. And if a Parliament in her Reign could do this, I deſire to know whence it is that the preſent Parliament may not have the like Power?

As to what you alledge concerning the Judgment againſt the two *Spencers* being reverſed in the 12th of *Richard* II. becauſe done whilſt *Edward* II. was ſtill alive; I deſire you would take notice, that this Parliament of *Richard* II. was wholly made and paſt by King *Richard* after the Baniſhment of the Dukes of *Lancaſter* and *Norfolk*; and that as well the Lords as Commons were in ſuch fear of the Arbitrary Power he then exerciſed, that they paſt whatever he would. And in this Parliament it was that the Proceedings againſt the Chief Juſtice *Treſilian* and his Fellow-Judges, who had been condemned and executed by Judgment in Parliament in the 11th of this King, were reverſed. And to prove the Illegality of this Parliament, you need but conſult the Statute-Book in the 1ſt of *Henry* IV. where you will find one of the firſt Statutes after his coming to the Crown, is to repeal all Acts and Proceedings made in that laſt Parliament of *Richard* II.

M. I doubt this will not do the buſineſs; for we maintain, that *Henry* IV. as alſo his Son and Grandſon, were Uſurpers, and conſequently all the Acts made in their Reigns were null and void.

F. I will grant you for once, that *Henry* IV. was an Uſurper, and that *Edward* III. was ſo alſo during his Father's life-time; but then it doth not follow, that all the Laws and Statutes made during thoſe times were null and void, ſince you muſt needs know the contrary; for even in that Parliament of the 21ſt of *Richard* II. tho 'tis true that Judgment againſt the *Spencers* was reverſed for the reaſon you have given, yet did that Repeal extend to no other Statutes but that, tho made in the ſame Parliament of *Edward* III. whilſt his Father was yet living: But they are all of them held for good at this day, as are alſo all the Statutes of thoſe three *Henrys*, whom you ſuppoſe to be Uſurpers, which have not been repealed by any ſubſequent Statutes, as I can aſſure you thoſe of the firſt of *Henry* IV. are not, and therefore are good Laws at this day. So that nothing can be a plainer Proof than this, that let the King's Title to the Crown have been what it would, yet Allegiance was due to them as long as they continued in the Throne.

Therefore to conclude, let me tell you, I think it behoves you, if you mean to keep that Office you hold under the Government, to take the Oath of Al-

legiance to their preſent Majeſties, ſince you owe your Protection to their Government, which certainly deſerves a temporary Allegiance as long as you enjoy the Benefit of it. And indeed, the Oath it ſelf is ſo looſely worded, that methinks any Man may take it without any ſcruple, ſince it doth no ways declare, that the preſent King and Queen have an Hereditary Right to the Crown, but only the Perſon ſwears to bear true Allegiance to their Majeſties King *William* and Queen *Mary*; which I think even Strangers and Denizens are bound to take as long as they continue in the Kingdom.

M. I am ſorry you ſhould think me, after ſo long an Acquaintance, capable of doing any thing againſt my Conſcience for any worldly Advantage whatſoever; and therefore I muſt freely tell you, that as for the Employment I hold, I will rather part with it, if it were ever ſo great, than do any thing againſt my Conſcience, and that Reputation I have hitherto maintained in the World of being an honeſt Man.

And therefore I cannot take the Oath as a mere Denizen, that owes Protection to the preſent Government, not only becauſe this Oath is inconſiſtent with that I have already taken, but alſo there is much more required of thoſe that owe a Natural Allegiance to their rightful King, than can be required of Strangers, till they become naturalized by Act of Parliament: And therefore it is, that when any War breaks out between neighbouring Princes, all ſuch Denizens, who do not become abſolute Subjects of this Kingdom by Naturalization, if they will act like honeſt Men, muſt look upon themſelves as obliged either to quit the Kingdom in caſe a War be declared againſt their natural Prince, or at leaſt are obliged not to act any thing to his prejudice, tho they may ſtill inhabit and traffick here; which is a quite different caſe from thoſe who are not only born the King's Subjects, but have alſo taken the Oath of Allegiance to him. And therefore I can by no means think it lawful to take this new Oath to King *William* and Queen *Mary*, tho it were required in no higher a ſenſe than as King and Queen *de facto*, ſince it can no ways conſiſt with that Oath which I have already taken to King *James* and his right Heirs, as I ſhall prove to you another time (ſince it is now very late) from the true Senſe and Meaning of thoſe words, *I will be faithful, and bear true Allegiance, &c.* which can only be ſworn to ſuch Kings and Queens, who beſides a bare Poſſeſſion, have alſo a Legal and Hereditary Right to the Crown.

F. I ſhall be very glad to hear you farther upon this Queſtion; for if that can be made out, I fear too many of the Clergy as well as Laity, by miſtaking the true ſenſe of this Oath, have been forſworn. But pray tell me when I ſhall wait on you, and hear what you have further to ſay upon this important Subject.

M. Pray let me ſee you two or three days hence, and then I ſhall be at leiſure; in the mean time I am your humble Servant.

F. And I am yours.

Bibliotheca Politica.

DIALOGUE XIII.

I. Whether an Oath of Allegiance may be taken to a King or Queen *de facto*, or for the time being.

II. What is the Obligation of such an Oath, whether to an actual Defence of their Title against all Persons whatsoever, or only to a bare Submission to their Power.

III. Whether the Bishops who refused to take the Oath of Allegiance to their present Majesties, could be lawfully deprived of their Bishopricks.

F. SIR, I hope I do not interrupt you by coming too soon; for the truth is, since I intend that this shall be the last Dispute I shall ever have with you upon this Subject, I was very desirous to have it dispatched as soon as I could, that when I have once discharged the Duty of an old Friend and Acquaintance, my Mind may be at rest, which side soever you take.

M. Dear Sir, I thank you, and tho I intended to go abroad this Evening upon an Appointment, yet I will now put it off, that I may enjoy your better Conversation; therefore pray begin where you left off, and prove to me that I may lawfully take this new Oath of Allegiance to King *William* and Queen *Mary*.

F. I cannot see any reason why you may not safely do it, since our best Common Lawyers are of this Opinion; for my Lord *Coke*, in his third Institutes, in his Notes upon the Statute of Treason, the 25th of *Edward* the IIId, gives it for Law, "That this Act is to be understood of a King in posses- p. 7.
"sion of the Crown and Kingdom; for if there be a King Regnant in pos-
"session, although he be *Rex de Facto, & non de Jure*, yet is he Seignior
"*Le Roy* within the purview of that Statute, and the other that hath Right,
"and is out of Possession, is not within this Act," *&c.* And if it be Treason to levy War against him, or to conspire his Death as long as he continues King, it can only be so, because the Subjects Allegiance is then due to him, for that all Men have either taken the Oath of Allegiance, or else are supposed to have done it.

M. I must beg your pardon, if I cannot come over to your Opinion neither in point of Law or Reason; for as long as I am persuaded in my Conscience that King *James* is King *de Jure*, so long must the Obligation of my former Oath last: and I suppose you will grant that it is as impossible to owe Al-

legiance to two Kings at once, as it is to ſerve two Maſters: and therefore you muſt pardon me, if I ſuppoſe that my Lord *Coke*, depending too much upon the commonly received Senſe of the Statute of the 11th of *Henry* the VIIth, which he quotes in the Margin, may be miſtaken in this great point, and may have alſo given an occaſion to divers others of his Profeſſion to fall into the ſame Error.

F. I doubt not but my Lord *Coke*, and others of his Profeſſion, who maintain the ſame Opinion, may very well be defended, as well from that Statute as other Authorities; but to paſs by that at preſent, I ſhall firſt diſcourſe with you upon this point, of the Lawfulneſs of taking this Oath to their preſent Majeſties King *William* and Queen *Mary*: and therefore you miſunderſtand me, if you believe that I think this Oath doth require from you the Performance of all thoſe Duties of Allegiance and Subjection which I my ſelf am obliged to, who am fully ſatisfied of their Title, and therefore muſt venture my Life and Fortune in their Quarrel to the utmoſt of my power againſt all Perſons whatſoever. But all that I think can be required of you, is, that whereas King *William* and Queen *Mary* are actually in poſſeſſion of the Regal Power, ſo long as they continue thus poſſeſſed of it, you may, I think, ſwear that you will be ſo far true and faithful to them, as not to enterprize any thing againſt them, but that you will pay them that Obedience and Submiſſion which may be lawfully paid to an actual Sovereign; not engaging hereby to uphold them in the poſſeſſion of the Throne againſt King *James*, and without debarring your ſelf from exerting that Allegiance you have ſworn to him upon any emergent ſafe Opportunity for the recovery of his Right.

M. I muſt beg your pardon, if I cannot aſſent to take this Oath in this low and qualified ſenſe that you would now put upon it, ſince beſides the Signification of the words themſelves, I am very well ſatisfied that the Impoſers of this Oath do intend ſomething more than a bare negative Obedience to the preſent Power; ſince it is the only Oath which is required from thoſe who take Imployments either Civil or Military, and from whom certainly not only a paſſive Obedience or Submiſſion, but alſo an active Obedience and Aſſiſtance is required, in defending the Crown and Dignity of the preſent King and Queen *de facto* with their Lives and Fortunes againſt all Perſons whatſoever: Or elſe how could the preſent Government ever truſt them? And all this cannot be ſworn to without a breach of that Oath they had formerly taken to King *James*; and therefore if I ſhould take it in this ſenſe (as the Oath it ſelf ſeems to imply) I ſhould be perjured. Beſides, by theſe words of being true and faithful, I ſhould look upon my ſelf as obliged to reveal all Plots and Conſpiracies which I may any ways happen to know of againſt King *William* and Queen *Mary*; which I think would be derogatory to my Allegiance to his Majeſty, ſince I ſhould thereby diſcover and accuſe ſuch of his good Subjects as endeavoured to reſtore him, and ſhould thereby hinder him, as much as in me lay, from being reſtored again to the Throne.

But if we conſider the word *Allegiance*, it is yet more ſtrict; and if I ſhould perform it to King *William* and Queen *Mary*, according to the true Intent and legal Senſe of that word, I think it could no ways conſiſt with that Oath of Allegiance I have already taken; ſince Allegiance is thus explained in the next following words of the Oath I have already taken: "*And him, and them*, viz. "the King and his Heirs, I will defend to the utmoſt of my power againſt all "Conſpiracies and Attempts whatſoever that ſhall be made againſt his or their
D. A. p. 15. "Perſons, Crown and Dignities." Now what kind of Aſſiſtance is here meant by the word *defend*, may be underſtood from all the Writers of our feudal Laws, who expound the *jus defenſorium*, by telling us the word *protegere* implies a Neceſſity of defending by Arms, as due from the Supreme Lord or Sovereign; and further, that Subjects are in the ſame ſenſe reciprocally bound to defend the Honour and Dignity of their Sovereign. And theſe words Allegiance, and the Defence that follows it, may be likewiſe underſtood from our feudal Laws, whereby the Vaſſals were bound by their Oath of Allegiance, as alſo by virtue of the Tenure of their Lands, to a Military Defence of their Supreme Lord the King, from whom all the Laws of *England* are held: and this is according to *Glanvil*, and all our old Lawyers. And tho I grant that Military Tenures are all now taken away by a late Statute, yet am I ſtill obliged

liged to the like Defence of the King and his Heirs, not only from the words of this Oath, but from the municipal Laws of this Kingdom alſo; which oblige all the Subjects that are capable to take up Arms for the King when need ſhall require.

Which may be thus further proved; firſt, from the antient Laws of *Edward* the Confeſſor and *William* the Conqueror: by both which, "all the People or "Freemen of the Kingdom were to affirm upon their Faith and Oath, within "the whole Kingdom, and without, that they will be faithful to their Sove- "reign Lord King *William*, and every where preſerve his Lands and Honours "with all Fidelity, and with him will defend them againſt all his Enemies." To this ſucceeded that which the Lord *Coke* calls *Legal Ligeance*, or the Common-Law Oath of Allegiance, which he cites out of *Britton* (who writ under *Edward* I.) which all the Subjects were obliged to take at twelve Years of Age at the Sheriff's Court, and at the Leet; without the taking of which, they had no warrant to abide in the Kingdom: and the form of it was to this effect; "You ſhall ſwear, that from this day forward you ſhall be true and faithful "to our Sovereign Lord the King and his Heirs, and Truth and Faith ſhall "bear of Life, and Member, and terrene Honour; and you ſhall neither know "nor hear of any Ill or Damage which you ſhall not offend (that is, oppoſe) "to the utmoſt of your power."

Ib. p. 14. Vid. Lambardi L. L. Edwardi, & L.L. Will.I. c. 52. Stat. 51. ibid. Calvin's *Caſe*. Cowel's *Inſt.* l.2. tit.3. §.14.

The ſame Author alſo here informs us, that "five things were obſerved by "all the Judges from this Oath in the Debate of *Calvin*'s Caſe: Firſt, that for "the time of its Obligation, it is indefinite, and without limit. Secondly, "two excellent Qualities were required, that is, to be true and faithful. "Thirdly, to whom; to our Sovereign Lord the King and his Heirs. Fourthly, "in what manner; and Faith and Troth ſhall bear of Life and Member; that "is, until the letting out the laſt drop of our deareſt Heart-blood. Fifthly, "where, and in what place; in all places whatſoever: for you ſhall neither "know nor hear of any Ill which you ſhall not offend." Such is the Ligeance which the Law has preſcribed in that antient Oath, which is ſtill in force; it is neither circumſcribed by Time nor Place; it is unconditionate and unreſerved; it is not a lazy paſſive Allegiance, requiring nothing but pure Submiſſion, but an active and vigorous Loyalty, exacting all that is in the Sphere of moral Poſſibility, and engaging us to ſpend our deareſt Blood in the Defence of our Sovereign's Perſon, and the Preſervation of his Crown and Dignity.

For it is to be obſerved, that by the Law this Allegiance is due to the King's Perſon; ſo the ſame Author ſays it was then reſolved by all the Judges, that "that Ligeance was due to the natural Perſon of the King (which is ever ac- "companied with the politick Capacity, and the politick Capacity as it were "appropriated to the natural) and not due to the politick Capacity only."

To conclude; if my former Oath of Allegiance to King *James* doth ſtill continue (as I am ſatisfied in my Conſcience it doth) I cannot take a new Oath of Allegiance to King *William* and Queen *Mary*, ſince I ſhould thereby be obliged by the force of theſe words in the Oath, *viz. I will be faithful, and bear true Allegiance*, to yield it as much to thoſe that are not my lawful Sovereigns, as I am to thoſe that are ſo; which will be contrary to my firſt Engagement: for tho I grant that there is no expreſs Declaration of the Right of the preſent Poſſeſſors of the Throne, and that I have heard that the word *rightful* (which was at firſt inſerted into this Oath) was ſtruck out, becauſe as many as could be might be drawn in to take it; yet as long as the words that remain import the very ſame thing, it is all one as if the word *rightful* were there: for tho the deliberate Omiſſion of the word *rightful* does neceſſarily infer, that we are not obliged in this Oath to a Recognition of their Right to the Crown, yet does it not infer, that we are not obliged to pay as high a degree of Allegiance as to any rightful King whatſoever. That Omiſſion indeed is an Argument that the word King in the Oath doth not neceſſarily ſignify a King *de jure*; but it is no Argument that true Allegiance does not ſignify true Allegiance, that is an Obligation to adhere to the King againſt all his Enemies: for there was no Debate, that we know of, about the ſenſe of the word Allegiance, neither is there the leaſt intimation given that they deſigned to reſtrain it to a lower ſignification, tho it was plainly neceſſary to do it, if

D. A. p. 24.

they

they intended to alter the commonly receiv'd meaning of it: wherefore, as the ſtriking out of the word *rightful* would not have prov'd, that they did not intend to oblige us to an active aſſiſtance of King *William*, againſt all Men living, if thoſe words had been expreſly inſerted in the Oath; ſo neither will it prove that the ſame Duty is not now requir'd of us, if the word Allegiance does, as I have prov'd, *in terminis* import it; and that as fully, as if it had been in expreſs words requir'd in it.

And that this word Allegiance implies ſomething more than a bare paſſive Submiſſion or Neutrality from all Subjects, as well as Magiſtrates and Officers, appears by that Paſſage in the Statute of the 11th of *Henry* VII. which you have now cited; where 'tis plainly and expreſly declar'd, "That every Sub-"ject by the Duty of his Allegiance, is bound to ſerve and aſſiſt his Prince and "Sovereign Lord at all Seaſons when need ſhall require." This is ſo expreſs and authentick a Declaration of the true Duty of Allegiance, that no Art or Sophiſtry can poſſibly evade it.

F. I confeſs you have argued this point of taking this new Oath of Allegiance, not only like a Civilian, but a Common Lawyer alſo; and I cannot deny the force of what you have ſaid, that this Oath muſt extend to an active Obedience, and Defence of their preſent Majeſties in their Right to the Throne, and not only to a bare ſluggiſh Submiſſion, or a lukewarm Neutrality. And therefore I cannot ſay but you are juſtly ſcrupulous in not taking this new Oath, until you are ſatisfied of their Majeſties Right as well as preſent Power: but if you will pleaſe to obſerve the purport of this Act of the 11th of *Henry* VII. (which you now mention'd) you will there find it as good as expreſly declar'd, that Allegiance is due to him who is *lawful* Sovereign, and the King for the time being is ſtill to be look'd upon as ſuch; for the words in the Statute are, "that no Man ſhall ſuffer for aſſiſting *the King for the time being*," without ſpecifying by what Title he holds the Crown, whether by an Hereditary Right, or by Conqueſt, Election, or the ſolemn Recognition of his Title by all the Eſtates in Parliament. So that by this Act, all that Allegiance that was once due to the former King *de Jure*, becomes thereby wholly transfer'd to the King *de Facto*.

M. I grant what you now ſay would go a great way to ſatisfy me, could you once prove that this Statute is now in force, and is not either abrogated or expired; or elſe (which I rather incline to believe) is not abſolutely void in it ſelf. In the firſt place therefore I hope to ſhew you that this was not Law before this Statute was made, and therefore not declaratory of what was Law, but endeavours to make that to be Law, which was not ſo before: ſo that the King for the time being, there mention'd, muſt be a King *de Jure*, or at leaſt one that was preſumed ſuch; becauſe at that time our Conſtitution knew no other: for that Poſſeſſion alone was not a ſufficient Title before the 11th of *Henry* VII. will evidently appear from theſe following Remarks.

Ib. *A.* 11. *H.* 7. p. 2, 3.

Firſt, That all the Kings of the Houſe of *Lancaſter* are declar'd in the Statute of the firſt of *Edward* IV. to be Kings *in Deed*, but not *of Right*, and *pretended Kings*; and particularly *Henry* VI. is ſaid to be rightfully amov'd from the Government, and his Reign affirm'd to be Intruſion and Uſurpation, and himſelf attainted for being in Arms againſt *Edward* IV.

Secondly, All Patents of Honour, Charters, and Privileges, which were granted by the Houſe of *Lancaſter*; all Acts of Royal Authority which the Kings of *England* have a right to execute by virtue of their ſole Prerogative (nay, Acts of Parliament themſelves, particularly thoſe relating to *Shrewsbury*, and ſome others, which by parity of Reaſon ſuppoſes the reſt in the ſame Condition) all Acts of this nature were confirm'd by the firſt of *Edward* IV. which is a good Argument that this Parliament believ'd the Authority by which they were perform'd to be defective and illegal; for we never find any ſuch general Confirmation as theſe paſs upon the Grants of the King *de Jure*.

Thirdly, In the firſt Year of *Henry* VII. *Richard* III. was attainted of High Treaſon in Parliament, under the name of Duke of *Glouceſter*; from whence 'tis plain, that as there was no Statute, ſo neither was there any Common Law to ſupport the Title of a King *de facto*: for Treaſon is an attempt againſt the King's Perſon, his Crown and Dignity, but no Man can commit Treaſon againſt himſelf; therefore if *Richard* III. had been a King in the ſenſe of this

Vid. *Lord Bacon's Hen.* VII.

Law,

Law, we may be ſure he would not have had ſuch an infamous Cenſure paſt upon him after his Death. *Bradſhaw*, and his High Court of Juſtice, were the firſt that were ſo hardy as to pronounce a King of *England* guilty of Treaſon.

Fourthly, If this Notion of a King *de facto* had been allow'd in the 11th of *Henry* VII. the principal Aſſiſtants of *Richard* III. could not have been attainted: for *Richard* being actually in the Throne, he was, according to your modern way of arguing, Rightful King; and conſequently the People ought to own him as ſuch, and defend him againſt all Oppoſers: and if ſo, certainly they ought not to be condemn'd as Traitors for doing their Duty, as we find many of thoſe were who fought for King *Richard*. Ibid. *p.* 4.

Fifthly, At the end of this Parliament, *Henry* VII. granted a general Pardon to the common People who had appeared againſt him in the behalf of *Richard* III. Now Pardon ſuppoſes a Fault, and the Breach of a Law, which they could not have been charg'd with, if the Plea of a King *de facto* had been warranted by the Conſtitution.

F. I muſt freely tell you, that you do not argue ſo much like a Lawyer in this Argument as you did in your former; and you have in that forgot to what end thoſe Statutes you mention were made, and what is the purport of them, or elſe ſome body hath miſinform'd you. For tho' I grant that all thoſe hard Expreſſions you mention, are given of the Kings of the *Lancaſtrian* Line in thoſe Statutes of the 1ſt of *Edward* IV. yet do none of theſe Expreſſions prove, that they were not *true* and *legal* Kings in the Eye of the Law all the while they reign'd; ſince divers Perſons were attainted for High Treaſon againſt them, whoſe Attainders were never revers'd, but ſtand good to this day; as in particular, the Attainder of the Earls of *Kent*, *Salisbury*, and of *Huntingdon*, who were all attainted by Act of Parliament in the 2d of *Henry* IV. and alſo the Earl of of *Northumberland*, and his Son the Lord *Piercy*, attainted in the 5th of this King; all which Attainders were never revers'd. So likewiſe *Richard* Earl of *Cambridge* was found guilty of Treaſon by his Peers, and his Attainder confirm'd by Act of Parliament in the ſecond of *Henry* V. and tho it is true this Attainder was afterwards revers'd in the firſt of *Edward* IV. becauſe the ſaid *Richard* was not only his Grandfather, but was alſo condemn'd for endeavouring to make *Edmund* Earl of *March* his Brother-in-law King of *England*, from whoſe Siſter King *Edward* IV. claim'd the Crown; yet the very reverſing this Attainder by Act of Parliament, declares it to have been good until that Repeal, ſince it was not declar'd void: all which are plain and evident Proofs, that Treaſon may be committed againſt the King *de facto*, and conſequently that Allegiance is alſo due to him, and not to the King *de jure*.

I have likewiſe prov'd that all thoſe Statutes which were made by thoſe Kings, and are not repeal'd, ſtand good at this day without any Confirmation by King *Edward* IV. and this you have no way to anſwer, but by inſtancing in Patents of Honour, or Charters of Privileges granted by thoſe Kings, and confirm'd by *Edward* IV. from whence you will infer, that ſome other Acts of like nature were in the ſame Condition; which let me tell you is no good Argument againſt them: for if you pleaſe to read that Statute of *Edward* IV. you mention, you will there plainly ſee, that the Grants, Patents, and other things there confirm'd, are either judicial Proceedings in the Courts of Juſtice, or elſe ſuch Charters, or Patents, which being thought to the prejudice of the Crown, were *ex abundanti cautela* thought neceſſary to be confirm'd by thoſe particular Perſons, Religious Houſes, and Corporations, who thought themſelves concern'd; nor were all others of like nature which were not ſo confirm'd, thereby void, ſince they hold good at this day: and if you underſtand any thing of our Law, you cannot but know, that no Grants of the King can be made void by Implication. And to ſhew you farther, that the Letters Patent made by *Henry* VI. were look'd upon as good in the Reign of *Edward* IV. it appears from *Bagot*'s Caſe in the Year-Book of the ninth of that King; where a Patent of Naturalization granted by *Henry* VI. tho it were not confirm'd by the Statute of *Edward* IV. was by the greateſt part of the Judges held to be good, and the Reaſons there given for it are very remarkable; ſince it was urg'd by the Counſel in behalf of the Plantiff, "that King *Henry* was then King in Poſ- Pag. 1, 2.
"ſeſſion, and it behoves that the Realm ſhould have a King, and that the

"Laws

" Laws ſhould be kept and maintain'd; and therefore tho he was in only by " Uſurpation, nevertheleſs every judicial Act done by him, concerning Royal " Juriſdiction, ſhall hold good, and bind the King *de jure* when he returns, *&c.* " So likewiſe a Charter of Pardon of Felony, and Licences of Mortmain ſhall " be good, and alſo the King that now is ſhall have the Advantage of every " Forfeiture made to the ſaid King *Henry*, *&c.*" And mark this farther, it is there alſo held, " that a Man ſhall be arraign'd for Treaſon done againſt the " ſaid King *Henry* in compaſſing his Death; and the Reaſon is very remark- " able, *becauſe the ſaid King indeed was not merely an Uſurper, for the Crown was* " *intail'd upon him by Parliament*; and this being not at all contradicted by " the Court, is ſtill taken for Law." And upon this Report, and not only upon the Statute of the 11th of *Henry* VII. did my Lord *Coke* found his Opinion I now mention'd, That a King *de facto* was within the Statute of the 25th of *Edward* III. And tho now it is true, that the farther arguing of this Caſe of *Bagot* was adjourn'd to a farther day, when the Juſtices did not argue, but the Serjeants and Apprentices at Law (that is the Barriſters, as we now call them) yet it ſeems to have been allow'd by the whole Court, that if King *Edward* who was then King, had made his Charter before he was declar'd ſo, it ſhould be void at that time; for every one who ſhall make a Charter of Pardon, ought to be King in Deed, at the time of the making thereof.

M. Pray, Sir, give me leave to reply to what you have now ſaid againſt my firſt two Arguments, before you go on to anſwer the reſt; for I confeſs the Authorities you bring ſeem ſo expreſs againſt me, that if I cannot take them off, there will be no further need for anſwering the reſt. I will not therefore deny, but that all publick Acts and Proceedings at Law, which are for the publick good and ſafety of the Kingdom, do hold good tho made under Uſurpers, and that for this Reaſon; becauſe ſuch Acts being for the publick Benefit, it is to be ſuppos'd that the King *de Jure* did give his tacit conſent to them: for (as it is well obſerv'd, in the Caſe you have now cited) it behoves the Realm ſhould have a King (that is, ſome Civil Government) and that the Laws ſhould be kept and maintain'd; but then thoſe Laws can extend only to ſuch things as are for the publick good, and do not tend to the diſinheriting the King *de Jure*, or barring him or his Heirs of their Right, as did that Act of the 7th of *Henry* IV. whereby the Crown was intail'd upon himſelf and his Sons, which was declar'd to be void by the 39th of *Henry* VI. So likewiſe this Act is void for the ſame Reaſon, ſince it would give a Right to the Subjects to defend the King for the time being, tho an Uſurper, againſt the true and lawful King, who would be thereby not only defeated of his Right himſelf, but alſo his right Heirs would be ſo too; which would be directly contrary not only to the Intent of the ſaid Statutes of the 39th of *Hen.* VI. and 1ſt of *Edw.* IV. juſt now mention'd, but alſo to the Act of Recognition of King *James* I's Title.

And therefore I muſt ſtill maintain that my Lord *Coke* is miſtaken in ſuppoſing a King *de Facto* to be within the Intent of the Statute of the 25th of *Edw.* III. for ſure it would ſeem a very odd queſtion for any one to ask touching the Laws that are made in any ſettled Monarchy for the defence of the King's Perſon, Crown and Dignity, who is meant by the King in thoſe Laws; whether the Lawful and Rightful King of that Realm, or any one that gets into the Poſſeſſion of the Throne, tho he be not a Rightful King but an Uſurper.

So likewiſe as to that Clauſe in this Statute, which makes it Treaſon to conſpire the Death of the King's eldeſt Son and Heir, it could be never intended for the Son of a King *de Facto*, ſince that would be to own him for right Heir of the Crown for ever, and thereby intail it upon his Family, to the prejudice of the right Heir of the King *de Jure*; and therefore, tho I grant ſome of the Judges and Lawyers held the Law to be ſo as you have cited it in *Bagot*'s Caſe; and that a King *de Facto* may enjoy thoſe Prerogatives in ſome reſpects, yet cannot this be extended to the prejudice of the King *de Jure*, and his Right Heirs. And tho I alſo grant that divers Acts of Parliament made by Kings *de Facto*, have for the moſt part held good without being confirm'd by any ſubſequent Statute of the King *de Jure*, yet have they been alſo repeal'd ſometimes; merely becauſe made whilſt the King *de Jure* was alive, as I ſhall prove more at large by and by.

F. I ſhall alſo take the boldneſs to reply to theſe Anſwers of yours, before I proceed to anſwer the reſt of your Arguments. In the firſt place, let me tell you that this Notion of a tacit Conſent in the King *de Jure*, ſuppos'd to be given to all Statutes made for the publick good, is to ſerve upon all occaſions, when thoſe of your Party cannot tell how otherwiſe to anſwer the Arguments that are brought againſt them; and you may as well tell me that they do alſo give their tacit Conſents to all other Acts that Uſurpers may do: and I may as well ſuppoſe that Queen *Elizabeth* the Wife of *Henry* VII. the lawful Heireſs of the Crown, did in the Perſon of her Husband give her tacit Conſent that this Act of the 11th of *Henry* VII. ſhould hold good for ever, ſince it is ſo much for the publick Good and Peace of the Nation; "That the Statute declares it "ſhould be againſt Law, Reaſon, and good Conſcience, that Subjects ſhould "ſuffer for fighting for the King for the time being." But I very much wonder if this ſuppos'd tacit Conſent were given to all Acts of Parliament by the Kings *de Jure*, why upon their return to the Government, they did not alſo expreſs this Conſent by confirming all the Acts made by their Predeceſſors the Kings *de Facto*, or elſe declare them void: but ſince they neither did the one nor the other, it is plain it was becauſe even they themſelves look'd upon it as needleſs.

Nor is your Reaſon at all ſatisfactory, why a King *de Facto* cannot be intended by the Statute of the 25th of *Edward* III. becauſe that maketh it Treaſon to conſpire the Death of the King's eldeſt Son and Heir, which ſay you can only be meant of the eldeſt Son of a King *de Jure*; which is to beg the Queſtion: for tho it is true, this Clauſe in the Act was intended for the preſervation of the King's eldeſt Son, yet it doth no where determine that this muſt be the eldeſt Son of a King *de Jure*: for tho I own this Clauſe was made to preſerve the Crown in the Right Line from Father to Son, yet does it make no difference between the Son and Heir of a King *de Facto*, and one *de Jure*; nor have you yet anſwer'd the Authorities I have brought from the Acts of Attainder of thoſe Lords, who conſpired againſt the three Kings of the Houſe of *Lancaſter*, which ſtand unreverſed unto this day; and which alſo confirm the Opinion given in *Bagot*'s Caſe, where it is ſaid expreſly, That a Man may be arraign'd for Treaſon committed againſt the King *de Facto*, by the King *de Jure*. And therefore I think my Lord *Coke* may very well be juſtified in his Opinion, notwithſtanding the queſtion you put, whether the Statute could mean him who is lawful and rightful King, or any other who gets into poſſeſſion of the Throne. Now this ſeems to me no ſuch odd Queſtion: for when the Law only mentions the King, and the Law-makers certainly knew that Kings without an Hereditary Right had often aſcended the Throne; if they had intended to except all ſuch Uſurpers, they ſhould have expreſly ſaid ſo. But indeed that diſtinction of a King *de Facto*, and a King *de Jure*, was not known till many Years after, being firſt heard of in the Reign of *Edward* IV. for a King *de Facto* (as the late Chief Juſtice rightly aſſerts) is Signior *Le Roy* within that Statute, and there is no other King but he whilſt he continues ſo. For King ſignifies that Perſon who has the ſupreme Government in the Nation; and a King *de Jure*, is he who ſhould have the Government, but has it not; that is, who of right ſhould be King, but is not: and the Statute of Treaſon tells us what is Treaſon againſt him who is King, not againſt him who ſhould be, but is not King: and Reaſon good it ſhould be ſo; for it is not merely a legal Title by deſcent, but a legal inveſtitute, and recognition by Parliament, that makes a legal King, or a King in Law, as it makes a legal Magiſtrate; and then all Kings *de Facto*, who are plac'd in the Throne by a legal Authority, and with all legal and acuſtom'd Ceremonies, are legal Kings; and as ſuch, may require a legal Allegiance: ſo that all thoſe hard words in the Statute of the firſt of *Edward* IV. that call thoſe Kings of the Houſe of *Lancaſter*, Kings in Deed, and not of Right, or pretended Kings, mean no more than this, that they were Kings for the time being, and according to the Laws which had made them ſo, tho not according to that Hereditary Right of Succeſſion which thoſe Statutes require. If you have any thing to reply to this, tell me, or elſe I will proceed to anſwer your two other Arguments.

C. A. p. 56.

E. L. R.

M. I will not at preſent ſay more to this, and therefore you may proceed.

F. Your two next Arguments are from the Attainders of *Richard* III. and his principal Aſſiſtants, which were by Act of Parliament. As to that Prince himſelf,

ſelf, as alſo his Adherents; the Attainders of Kings *de facto*, and their Aſſiſtants in After-Parliaments, do not prove that Subjects cannot be guilty of Treaſon againſt a King in poſſeſſion. Nor does the Statute of Treaſon relate to a King *de jure* only, for that Statute was not made to ſecure Princes Titles, but the Quiet of their Government whilſt they ſat upon the Throne: for tho a King, if he be an Uſurper, whenever the rightful King regains the Poſſeſſion of his Throne, if he were a Subject before, may be attainted of Treaſon for his Uſurpation, as was *Richard* III. for Treaſon againſt his own Nephew King *Edward* V. yet this does no way prove that *Richard* III. was no true King during his Uſurpation, but only ſhews the Parliament's Abhorrence of his Treaſon; and to deter others from falling into the like, attainted him and ſeveral of his Accomplices who had aſſiſted him in his ſaid Uſurpation. For that they were not barely attainted for defending King *Richard*'s Title, appears from this, that the Earl of *Surrey*, Son to the Duke of *Norfolk*, and divers other Noblemen and Gentlemen who fought for King *Richard* at *Boſworth-Field*, were never attainted at all. But as for the Pardon that you ſay paſſed in that Parliament of the 1ſt of *Henry* VII. you are very much miſtaken in the purport of it; for if you pleaſe to look upon it again, you will find that it
Vid. 1 H. 7. cap. 6. "was not a general Pardon for the common People, who had fought on the "behalf of *Richard* III. but of all thoſe who had come over with *Henry* VII. "himſelf, or who were with him in the Field againſt *Richard* III. for all manner of Murders, Spoils, and Treſpaſſes committed by them, in taking part "with King *Henry* againſt his Enemies." So that you ſee the aſſiſting of a King *de facto* was not only juſtifiable, but thoſe that had fought againſt him, thought themſelves not ſafe till they had their Pardon.

Nay, farther, that Attainders paſſed in Parliament are no proof that the Princes againſt whom they were paſſed were not lawful King, appears from hence, That when *Edward* IV. was driven out of the Kingdom, and diſpoſſeſſed of the Throne, the next Parliament under *Henry* VI. paſſed an Act of Attainder againſt him and his Adherents. But as for the Attainder of *Henry* VI. you are very much miſtaken to ſuppoſe, that it was for any Treaſon committed againſt *Edward* IV. but it was for Breach of the Agreement made with his Father the Duke of *York*, and in making war again upon him; for had he not done this, he had continued lawful King during his Life by the Duke of *York*'s own Conſent. For in the Parliament-Roll you your ſelf have
Rot. Parl. Edw. 4. 39 H. 6. n. 18. already cited, it is thus expreſſed: "That conſidering the Poſſeſſion of the "ſaid *Henry* VI. and that he had before this time been named, taken, and reputed King of *England*, and *France*, and Lord of *Ireland*; the ſaid Duke is "content, agreeth, and conſenteth, that he be had, reputed, and taken for "King of *England*, and of *France*, with the Royal Eſtate, Dignity, and Preheminence belonging thereto, and Lord of *Ireland*, during his Life natural; "and for that time the ſaid Duke, without hurt or prejudice of his ſaid Right "and Title, ſhall take, worſhip, and honour him for his Sovereign Lord." So that you ſee that by the Judgment of the Parliament, and by the expreſs Conſent of the right Heir of the Crown, a King *de facto* was to be owned by this right Heir for his true and lawful Sovereign, and therefore could not be attainted for detaining the Crown from him, or his Son.

M. I will not diſpute this Point any further; but yet, methinks, tho Treaſon might be committed againſt the King *de facto* whilſt he continues King, yet this is not for any Allegiance due to him, but becauſe ſuch Treaſon being againſt the due Order of Government, and the common Peace of the Nation, ſuch Actions are therefore Treaſon from the preſumed or tacit Conſent of the King *de jure*.

C. A. p. 58, 59. *F.* I grant indeed that ſuch Acts are againſt the Order of Government, and very deſtructive to it, which is the only reaſon why they are made Treaſon by Law: and this is as good a reaſon why the Law ſhould make them Treaſon againſt a King *de facto*, as againſt a King *de jure*, for they are equally againſt the Order of Government, and deſtructive to it, whoever is King; and that is the only reaſon why they made it Treaſon at all. Now this preſumed or tacit Conſent of the King *de jure* is a very pretty Notion, and ſerves you for a great many good turns; it makes Laws, and it makes Treaſon, and gives Authority to the unauthoritative Acts of a King *de facto*; that is to ſay (or you

ſay

ſay nothing) that the preſumed Conſent of a King *de jure*, inveſts the King *de facto* at the time with his Authority: for if he hath no Authority of his own, unleſs what the preſumed Conſent of the King *de jure* gives him, that cannot make any treaſonable Act done againſt him to be Treaſon; for it cannot alter the nature of things, nor make a Man guilty of Treaſon againſt any Perſon to whom he owes no Duty of Allegiance. And if the preſumed Conſent of the King *de jure* can inveſt the King *de facto* with his Authority, it muſt tranſfer the Allegiance of the Subjects too: and then Subjects are as ſafe in Conſcience, as if the King *de jure* were on the Throne, for it ſeems there is his Authority and tacit Conſent, tho not his Perſon.

But indeed this is all mere trifling; the King *de facto* has Authority, or elſe none of his Acts of Government can have any; for that which is done by a Perſon who has no Authority, can lay no Obligation upon us: whence then has he this Authority, ſince he has no legal Right to the Throne? not ſure from the preſumed Conſent of the King *de jure*, which is Nonſenſe to ſuppoſe; but from the poſſeſſion of the Throne, to which the Law it ſelf, as well as the Principles of Reaſon, have annexed the Authority of the Government.

M. I am ſo far of Biſhop *Sanderſon*'s Opinion in his Caſe concerning taking the Engagement, that when Uſurpers or Kings *de facto* have taken upon them the Government, they are obliged to adminiſter it for the common Good and Safety of the People; and as far as that comes to, we are alſo obliged to live peaceably under them, and to yield Obedience to them in things abſolutely neceſſary for the upholding Civil Society within the Realm; ſuch as are the Defence of the Nation againſt Foreigners, the Furtherance of publick Juſtice, the Maintenance of Trade and Commerce, and the like. But ſure this is no Argument for transferring our Allegiance from the lawful King and his Heirs whilſt they are alive; and therefore I muſt ſtill ſuppoſe that this Statute of the 11th of *Henry* VII. can do no Service to the preſent Government, becauſe it is virtually repealed by ſeveral Statutes. As *1ſt*, By the 28th of *Henry* VIII. concerning the Succeſſion of the Crown, wherein it is expreſly provided, that if any of his Children ſhould uſurp upon each other, or if any of thoſe to whom he ſhould bequeath the Crown by his laſt Will, or Letters Patent, ſhould take the Crown in any other manner than what ſhould be thereby limited, ſuch Children or others ſhould be guilty of Treaſon for ſo doing. Now it is plain ſuch Treaſon muſt only have been committed againſt the right Heir, and conſequently the Perſon ſo taking the Crown was not to be looked upon as King *de facto*. It is alſo virtually repealed by the Statute of *primo Elizab.* by which we are obliged to ſwear to be true to the Queen, her Heirs, and lawful Succeſſors (*i. e.* thoſe who have a Right to the Crown by Proximity of Blood) as alſo by the Oath of Supremacy, enacted in the 4th of King *James*, by which we are likewiſe ſworn to bear true Allegiance to his Majeſty, his Heirs, and Succeſſors. From which Oaths I argue, (1.) That if we are ſworn by Act of Parliament to pay Allegiance to the Heirs of a King *de jure*, who never were in poſſeſſion, then *à fortiori* to a King *de jure*, who, beſides the Legality of his Title, had been actually recognized as Sovereign, and enjoyed an unconteſted Adminiſtration of the Regal Power. (2.) If our Laws oblige us to ſwear Subjection to the Heirs, *&c.* of a rightful Prince, then by undeniable Conſequence we are bound not to tranſlate our Allegiance to thoſe who are unjuſtly ſet up by the People; for without all queſtion the words *Heirs* and *Lawful Succeſſors* were made uſe of on purpoſe to ſecure the Hereditary Rights of the Monarchy, and to prevent all Uſurpations upon the direct Line. And ſince by virtue of that Statute, which framed the Oath of Allegiance and Supremacy, we are not to acknowledge any pretended Governors, to the Prejudice or Diſinheriſon of the Heirs of the King *de jure*, then moſt certainly we ought not to do this in oppoſition to the King *de jure* himſelf; ſo that now we can have no pretence to make Right the neceſſary Conſequence of mere poſſeſſion of the Crown, any more than in private Eſtates.

F. In the firſt place, I agree with you in what you have ſaid, that Kings *de facto* are to be obeyed in all things tending to the publick Good of Society; but then it will alſo follow, that Allegiance is due to them from that great Law of proſecuting the ſame publick Good: ſince it were much better that even

Kings *de jure* ſhould loſe their Right, than that a Nation ſhould be involved in a long and cruel War, to the weakning and impoveriſhing thereof, and to the deſtruction of ſo many thouſands of ordinary as well as noble Families; as was ſeen in the long Civil Wars between the Families of *Lancaſter* and *York*. So that I cannot but think it would have been much better for this Nation, if that Family had continued to govern us unto this day, rather than that *Edward* IV. ſhould have obtained the Crown, with ſo great a Deſtruction of the People of this Nation, and ſo great Cruelty as was then exerciſed upon King *Henry* VI. and the Prince his Son, and ſo many other Perſons beſides, as you may read in the Hiſtory of thoſe times.

But I come now to anſwer the reſt of your Arguments, whereby you will prove this Statute of the 11th of *Henry* VII. to be virtually repealed. And here by the way I muſt tell you Gentlemen of this Opinion, that I cannot but admire your wondrous Sagacity in diſcovering this Act to be repealed, when my Lord *Coke*, and all the reſt of our Lawyers, do ſtill ſuppoſe it to be in force. But indeed the reaſon you give for it is not urged like a Common Lawyer, and therefore I think it will ſignify little: for tho I grant that an Act of Parliament may be virtually repealed by a ſubſequent Act, yet it is only in ſuch Caſes where they are abſolutely contradictory, and inconſiſtent with each other; but if they are not ſo, an Act of Parliament can never be ſaid to be virtually repealed. And therefore I ſhall now ſhow you, that notwithſtanding the Statute of *Henry* VIII. and the Oaths of Supremacy and Allegiance you have now mentioned, this Statute may very well continue in force and unrepealed. Firſt, As to the Statute of *Henry* VIII. whereby it was declared Treaſon for any one of his Children, upon whom the Crown was ſettled, to uſurp upon each other; that part of the Statute, which makes this Treaſon, was repealed by the 1ſt of *Edward* VI. and by the 1ſt of Queen *Mary*. Or admit it had not been ſo, yet this Clauſe in the Statute of *Henry* VIII. would have been abſolutely void in it ſelf againſt any ſuch Uſurper, when actually poſſeſſed of the Crown; ſince it was held by all the Judges in the Caſe of *Henry* VII. who at the time of his coming into *England* ſtood attainted by Act of Parliament, that this Attainder need not be reverſed, ſince Poſſeſſion of the Crown takes away all precedent Defects.

1 Seſſ. Chap. 12.

But as to the Statutes of the 1ſt of Queen *Elizabeth*, and the 4th of King *James*, by which the Oaths of Allegiance and Supremacy were enacted; I conceive neither of theſe Oaths can amount to a virtual Repeal of this Act: for tho I grant one end of theſe Oaths may be to ſecure the Right of the King's or Queen's Heirs by lineal Deſcent, yet it will not therefore follow, that a King *de facto*, or for the time being, may not be legally defended in the Throne; for as for that part of the Oath which was taken to King *James* himſelf, it can hold no longer than whilſt he continued King. If therefore the Eſtates of the Kingdom have adjudged him to have forfeited or abdicated the Crown, the whole Nation ought to take this as to have been legally done, ſince it was done by the judgment of the higheſt Authority in the Nation, when King *James* had deſerted the Throne. The like I may alſo ſay for the other part of the Oath of Allegiance, whereby we are obliged to his Heirs and lawful Succeſſors: for ſince there has been a Diſpute concerning the Succeſſion of the Crown, between the Princeſs of *Orange* and your Prince of *Wales*, if the Convention, who are the ſole proper Judges in this Caſe, have thought fit, for the Reaſons I have already given you at our laſt Meeting, to declare King *William* and Queen *Mary* the lawful King and Queen of *England*, all the Nation ought to accept them for ſuch, ſince it was done by the higheſt Authority at that time extant in the Nation, and the only proper Judges of that Right; and if Diſputes about legal Rights (of which certainly that of ſucceeding to the Crown is of the higheſt importance) ought to be decided by Law, and not by the Sword (which is not the deciſion of Civil Authority, but of Force) the Sentence of competent Judges muſt end the Diſpute. And if the Eſtates of the Realm be not the proper and legal Judges of ſuch Diſputes that concern the Right to the Crown, there can be none; and if they be, Subjects muſt acquieſce in their Judgments, or it is all one as if there had been none: for if Men may pretend Conſcience, and adhere to their own private Opinions as ſole Judges, the Diſpute muſt end in Blows; which is contrary to

E. L. R. *p.* 8, 9.

the

the Reaſon and Nature of human Societies, which were inſtituted to prevent Civil Wars, and to end all Controverſies by a legal Judgment without the Sword.

And to let you ſee farther, that as to the Allegiance of the Subjects it is all one in reſpect of us who are Subjects, whether the Convention have judged Right or Wrong in this Caſe: Let us ſuppoſe a Perſon who has only a Pretence, but no true Right to an Eſtate, ſhould commence a Suit of Law for it, and at laſt obtain a Verdict of the Jury, and alſo a Judgment of the Court of King's Bench for his Title; can any Man deny but that the Sheriff is, by virtue of this Verdict and Judgment, obliged to put this Abator into poſſeſſion of this Eſtate, notwithſtanding he may know of his own knowledge, that the Perſon who has obtained this Judgment has no true Right to the Eſtate? Or will any Lawyer doubt whether all the Tenants of the Mannor are not obliged to ſwear Homage and Fealty to this ſuppoſed Lord, if they are required by him ſo to do? Now tho the true Heir or Owner has the legal Right to the Eſtate, yet by the ſupreme Law of all Societies, which refers the Deciſion of all perſonal Rights to a legal Authority; he who by a legal Judgment is poſſeſſed of it, has the legal Right in the Eſtate againſt all other Claims, and legal Authority muſt defend him in it, and all who will ſubmit to Laws and legal Authority, muſt acquieſce in it. Ibid. *p.* 19, 20.

And thus it muſt be with reſpect to the Rights of Princes as well as of Subjects: The Right to the Crown has been often diſputed, as we all know; and to ſay that when ſuch Diſputes happen, there is no Authority in the Nation to decide them, is to ſay that Princes have no Right to their Crowns by the Laws of that Nation; for there can be no Civil Rights, of which there neither are nor can be any Civil Judges: for no Man, no not a Prince, can be Judg in his own Cauſe; and if Princes have no legal Rights, they can loſe no legal Rights when they loſe their Crowns, and I doubt their natural Rights will affect the Conſciences of very few Subjects. Therefore every independent Civil Society, which is not wholly governed by the Sword, muſt, from the nature of ſuch Societies, and the reaſon of their Inſtitution, have Authority within it ſelf to decide all Controverſies which may ariſe about the Rights of every Member of that Society, and to preſerve it ſelf from falling into a State of War, which is a Diſſolution of all Civil Government: and if there ought to be ſuch an Authority in every civilized Nation, when this ſupreme Authority has given Sentence in ſuch Diſputes, this muſt alſo determine all the Subjects, and ought likewiſe to have the ſame effect upon the contending Princes themſelves; and no Right, or pretence of Right, ought to affect the Conſcience after ſuch a final Judgment, unleſs Civil Rights can oblige Subjects to diſſolve Civil Governments, and to diſpute Civil Rights, not by the Law, but by the Sword; which is to overthrow all Civil Rights, and put an end to the Authority of Laws.

I hope this may ſerve to ſhew you how much you are miſtaken, to ſuppoſe that there can be no King in an Hereditary Monarchy, but the next lineal Heir. And tho I grant no Allegiance can be due or ought to be paid to him who is no King, yet will it not follow, that none can be due to any Prince if he be not the next Heir; for that no Obedience can be due to him who is no King, I readily grant, but yet he may be a legal King in this Kingdom, who is not the next Heir by Blood, as almoſt half of the Kings of *England* ſince the Conqueſt were not, and yet have been always owned and obeyed as legal Kings.

M. I confeſs what you ſay would go a great way to ſatisfy me, could you prove that there was no Difference between the Succeſſion to Crowns and private Inheritances, where I grant that the Judgment of the ſupreme Court of the Nation, is to determine not only the Poſſeſſion, but the Right too, in reſpect of the Perſon who loſes his Eſtate by an unjuſt Verdict, or illegal Judgment; whereas it is otherwiſe in the Title of Crowns, to which Princes have a Right as well by the Laws of God and Nature, as alſo by the received ſettled Laws and Cuſtoms of the Kingdom concerning the Succeſſion by Deſcent; which is called, in the 13th of Queen *Elizabeth*, (in the Statute we have ſo much debated at our laſt Meeting) the common Laws of this Realm: and it is there declared, that it ought to direct the Right of the Crown of *England*, and

and it is there made Treaſon, during the Queen's Life, to affirm the contrary. And this Courſe of lineal Succeſſion at Common Law was alſo declared by ſolemn Judgment in Parliament, in the Caſe (I have ſo often urged) of the Duke of *York*'s Title to the Crown againſt *Henry* VI. that it could no way be defeated by Act of Parliament; and therefore I muſt ſtill tell you, that you go upon a wrong ground, when you ſuppoſe that there can be now any Diſpute who is rightful King of *England*, ſince I have often told you, that he can neither abdicate or forfeit his Right to the Crown, and that no Parliament whatever (much leſs a Convention) could have any power to declare he had abdicated the Government, and that thereby the Throne was become vacant. For tho I grant the Judgment of the Eſtates of the Kingdom, when legally aſſembled, ought to be received with great Submiſſion and Reſpect; yet muſt it be only in ſuch Matters which they have a legal Cognizance of, and which they are impowered by the Laws and Conſtitutions of the Kingdom to determine. But their voting him, whom you your ſelf cannot deny to have been their lawful King, to have abdicated the Throne (when indeed he had not) and then not only to declare the Throne vacant, but alſo to place thoſe therein whom you your ſelf dare not affirm to be the next Heirs by Blood, are things quite out of their Element, and beyond the Sphere of their Authority. And tho I grant that they may ſometimes judge concerning the Succeſſion of the Crown, and who is next Heir to it, yet is this only to be underſtood as far as they judge according to the common Laws of the Succeſſion already laid down at our laſt Meeting, and not when they go quite contrary to them: and therefore tho I own the Parliament might juſtly declare *Henry* VI. to be an Uſurper, and conſequently might be depoſed; yet it doth not therefore follow that they had a like Right to declare *Edward* IV. an Uſurper, and to paſs an Act of Attainder againſt him, as I confeſs they did after that Prince had held the Crown for ten years together, ſince that was beyond their power to enact or declare by the fundamental Conſtitution of the Government.

F. I am ſorry your Anſwer can afford nothing new, but only the Repetition of the ſame falſe Principles and Arguments that have been already ſo often anſwered in our former Converſations: for in the firſt place I have ſufficiently proved, that neither the Laws of God nor Nature have ordained any ſuch thing as a lineal Succeſſion of Kings, or any irreſiſtible or unforfeitable Power in them, which they can never fall from, let them act ever ſo tyrannically. For I think I have ſufficiently proved, that not only in abſolute Monarchies, but alſo in limited Kingdoms, where the King has not the whole ſupreme Power, a King may not only be reſiſted, but may be alſo declared to have abdicated or forfeited his Right to govern, in caſe of any apparent obſtinate Violations of the fundamental Conſtitution, in thoſe great Points that make that Government to differ from a deſpotick Monarchy; and that if they had not this Right, all their Liberties will ſignify nothing, and their Lives, Liberties, and Eſtates would lie wholly at the King's mercy, to be invaded and taken away whenever he pleaſed. I am forced to repeat this, to remind you of the Reaſons upon which thoſe Principles are founded; and therefore you do but fall into your old Miſtake, when you affirm, that by the fundamental Conſtitution of the Government, the great Council of the Nation (which was but the ſame with our late Convention) had no power to declare the King to have broken the original Contract between him and his People.

Therefore what you ſay concerning the want of Authority in this great Council to declare the Throne vacant, is altogether precarious, unleſs you could alſo prove that it is againſt the fundamental Conſtitution ſo to do; whereas I have ſo far proved the contrary, that the Throne has been declared vacant no leſs than eight times ſince the Conqueſt, which makes up almoſt a third part of the Succeſſions of all the Kings and Queens that have reigned ſince that time. So that if the Cuſtom and Practice of great Councils or Conventions (and thoſe not condemned by any ſubſequent Statutes) can be the only Rule or Guide for the Conſciences of all the Subjects of this Nation, we have certainly had that as ſolemnly declared now, as in any other great Council or Convention that has been ever held in this Kingdom. But as to what you ſay concerning the want of Power in thoſe Councils, to declare or recognize who are the right Heirs to the Crown, but not to make them ſo, is very pleaſant; ſince

that

that were all one as if two Men, who contended for an Eſtate, ſhould bring the matter before the Houſe of Peers, and when that was done, and the Caſe ſolemnly heard by Counſel on both ſides, that Party who had loſt the Cauſe, ſhould declare that this Court (though the higheſt in the Kingdom) had no power to judge in prejudice of himſelf, who had an undoubted Right to the Eſtate, which were to give the Lords a power to give Judgment only for one ſide; and why the other Party, if the Judgment had been given againſt him, ſhould not have made the like Plea, I cannot underſtand: ſo that ſuch a Judgment would be altogether in vain.

Therefore to apply this to our purpoſe, tho the Parliament, being prevailed upon by the Strength and Faction of the Duke of *York*, did (as I granted at our laſt Meeting) declare *that his Title could in no wiſe be defeated*; yet *Henry* the VIth being then in the Throne, they might have certainly given a contrary Judgment if they had pleaſed, and then I ſuppoſe the Title of the Houſe of *York* might have been ſo defeated, as that the Nation had never been troubled with it again: and ſo alſo, when by the Power of *Edward* the IVth, a Parliament met, and declared him to be lawful King from the time of his Father's Death, yet when the ſaid King was driven out of the Kingdom by the Earl of *Warwick*, and King *Henry* the VIth reſtored to the Throne, a Parliament was ſummoned in the 49th of this King, wherein *Edward* the IVth was declared an Uſurper, and himſelf attainted; and to which Parliament the Duke of *Clarence*, Brother to King *Edward* the IVth, is firſt ſummoned, as well as the Archbiſhop of *Canterbury*, with all the other Biſhops, Temporal Lords, and Judges (of whom *Littleton*, the Author of the Book of Tenures, was one:) ſo likewiſe upon King *Edward*'s Recovery of the Crown the year following, King *Henry* was again depoſed, and a Parliament called, wherein all the Dukes, Earls, and Barons, with the Archbiſhops of *Canterbury* and *York*, and moſt of the reſt of the Biſhops, ſwore to Prince *Edward*, after called *Edward* the Vth, as right Heir to the Crown.

Rot. Clauſ. 49 H. 6. m. 6.

Ib. 11 Edw. 4. m. 1.

Now I deſire to know what other Law or Rule there was then for the Subjects Allegiance, but the ſolemn Judgment or Declaration of the Eſtates of the Kingdom aſſembled in Parliament, ſince their Acts and Judgments were in this Diſpute directly contradictory to each other: ſo that it is evident from the conſtant Practice of thoſe times, that the King *de facto* was always owned as lawful Sovereign, and had Allegiance ſtill paid him by all the People of this Kingdom, except thoſe who being the Heads of one or the other Party, were either attainted, or forced to fly the Kingdom.

But as for all others, tho different and contrary Oaths of Allegiance were impoſed upon the People, ſometimes by the one, and ſometimes by the other of thoſe Kings, according as they got poſſeſſion of the Throne; yet I can no where find, that ever any body ſuffered for barely ſwearing Allegiance to the King *then in being*: for it was always taken for Law, that Allegiance was due to the King *de facto*, ſince ordinary Subjects are not ſuppoſed to underſtand the legal Right or Juſtice of the King's Title.

M. I muſt ſtill ſay, that there was ſome colour for the Peoples thus acting (as you ſay they did) during the Conteſt for the Crown between the two Families of *York* and *Lancaſter*, when I grant it was ſomewhat a difficult matter to judge which of the two had the beſt Right to the Crown, by reaſon that the Houſe of *Lancaſter* had held it for three Deſcents; as alſo from the Speciouſneſs of their Title, ſince it was founded upon a pretended Claim by Right of Blood, upon ſuppoſing that *Edmund*, ſirnamed Crouch-back (who was one of the Anceſtors of this Houſe of *Lancaſter*) was the eldeſt Son to *Henry* the Third; which had it been true, would have given *Henry* the Fourth a good Right to the Crown, not only againſt *Richard* the Second, but his own Grandfather *Edward* the Third likewiſe (had he been then alive:) and this Deſcent falling out long before the Memory of any Man then living, who could confute the Falſity of this pretended Pedegree? The People of *England* might very well be excuſed for owning an Uſurper, and paying Allegiance to him, ſince they did not know but his Claim might have been right, eſpecially ſince it was approved of in full Parliament without any Contradiction, as I have already ſhewn you at our laſt Meeting.

But

But what is all this to the matter now in Debate between us, when the Lineal Succeſſion of the Crown has been ſo often declared to be the only means of acquiring a juſt Title to it; and every one knows very well who was owned for lawful King of *England* within theſe three Months, and alſo who was prayed for in all our Churches as his Son and Heir apparent? and therefore I muſt ſtill tell you, that your Parallel between thoſe Kings *de facto* of the Houſe of *Lancaſter*, and thoſe Princes whom the Convention have now voted to fill the Throne, does not at all agree, ſince every Subject of this Kingdom, who has but ſenſe enough to go to Market, can very well tell (if he will deal ſincerely) to whom his Allegiance is due.

F. As to what you have now ſaid, it is no more than a Repetition of what you have already urged to evade the Force of theſe clear Authorities; but indeed it was all one, when a Prince had been once recognized for lawful King by Act of Parliament, whether the People knew his Title not to be good by Right of Blood or not: And this I have plainly proved to you from the Inſtance of *Richard* the Third, who tho both his elder Brother's Children were then alive, and the eldeſt of them had been proclaimed King, and alſo owned for ſuch by himſelf, and whoſe Title he had alſo ſworn to maintain in his Brother King *Edward*'s life-time, as appears by the Clauſe-Roll of the 11th of *Edward* the Fourth; yet when he had once depoſed him, and had called a Parliament which recognized his Title, his Acts and judicial Proceedings ſtand good at this day: and tho he himſelf was attainted, and declared a Tyrant and an Uſurper, yet all the Subjects who acted under his Authority, and had taken an Oath of Allegiance to him, never needed an Act of Indemnity for ſo doing; whereas thoſe that came over with *Henry* the VIIth were fain to have an Act of Pardon paſſed to indemnify them for fighting againſt *Richard* the IIId (as I have now ſhewed you.) And tho this Parliament of the firſt of *Henry* the VIIth agreed to repeal divers Acts which the King found fault with; yet as for all other Statutes, made in the Reign of King *Richard* the IIId (which have not been ſince repealed) they are ſtill in force without any Confirmation. Likewiſe when *Henry* the VIIth had prevailed over *Richard* the IIId, and that he was ſlain in the Field, tho all the Nation very well knew that *Henry* the VIIth could not be Heir of the Houſe of *Lancaſter*, becauſe his Mother was then alive, and had never formally given up her Right, if ſhe had any; as certainly ſhe could have none, as being deſcended from *John* Earl of *Somerſet*, who was baſe Son to *John* of *Gaunt* Duke of *Lancaſter*, by *Catherine Swinford*, whilſt his Wife was alive; and tho I grant after his Marriage with the ſaid *Catherine*, the Children born of that Bed were made Legitimate by Act of Parliament in the 20th of *Richard* the Second, yet that Legitimation only reſpects ſuch private Privileges and Inheritances which they might enjoy or ſucceed to as Subjects, and had no reſpect to the Crown; the Succeſſion of which they were expreſly declared uncapable of by that very Act of Legitimation, ſtill to be ſeen upon the Parliament-Roll. But for all this, when *Henry* the Seventh had called a Parliament, and was therein recognized for their lawful Sovereign, and that the Crown was ſettled by Statute on him and the Heirs of his Body (without any mention of the Princeſs *Elizabeth*, who ought to have been Queen by Right of Blood) yet none of the Subjects of this Kingdom (as I can find) ever ſcrupled to ſwear Allegiance to him, before ever he married that Princeſs; tho they as well knew that he could have no Right by Blood, as you can ſuppoſe that the People at this day can know whether King *James* has abdicated or forfeited the Crown or not, or whether your Prince of *Wales* be his true and lawful Son: for ſince they are both nice and difficult Points, and have been determined by the Convention, the Supreme Judges in this caſe, in favour of their preſent Majeſties, and that they alſo recognized their Title after they became a Parliament; I can ſee no manner of reaſon why all the Subjects of this Kingdom may not as well juſtify their taking this new Oath of Allegiance to them, notwithſtanding their former Oath of Allegiance to King *James* and his right Heirs, as well as the People of *England* could juſtify their taking an Oath of Allegiance to *Henry* the Seventh, notwithſtanding their former Oath to *Edward* the Fourth and his right Heirs, before ever *Henry* the Seventh had married the Princeſs *Elizabeth*, the Heireſs of the Crown; eſpecially ſince this Act of the 11th of *Henry* the Seventh (which we are now diſputing about) was

Mem. 1.

Vid. *the Act printed at large in* Buck's *Hiſt.*

was made expreſly to ſecure and indemnify all thoſe who ſhould attend upon the King for the time being, and do him true and faithful ſervice of Allegiance, *&c.* And therefore it lies upon you ſtill to prove, that this Statute is either expired, or elſe void in it ſelf; otherwiſe (beſides the conſtant Practice of former times) we have here an expreſs Act of Parliament declaring it every Man's Duty to pay Allegiance to the King for the time being, and then certainly he is as much obliged to ſwear it too.

M. I doubt not but I ſhall prove to you, that this Statute expired with *Henry* the Seventh, from a Clauſe in the Act it ſelf; for if you pleaſe to read immediately after thoſe words you have now cited, "That all thoſe who do the "King for the time being true and lawful Allegiance, *&c.* [it follows thus] "ſhall be ſecured from all manner of Forfeitures and Moleſtations relating to "their Perſons or Eſtates; *(but mark)* provided always that no Perſon or "Perſons ſhall take any Benefit or Advantage by this Act, which ſhall hereafter "decline from his or their ſaid Allegiance." Now we know a Proviſo is an Exception or Reſtraint upon the Latitude and Comprehenſiveneſs of the Law, and that all Statutes are perfectly null ſo far as the Proviſo reaches. Having premiſed this, I ſhall endeavour to prove that this Act was deſigned only for the Security of that Reign in which it was made, and cannot be ſtretched any farther. To make this appear, let us now ſuppoſe a Competition between the King *de jure*, and *Henry* the Seventh (that is, one *de facto*) and that the Subject engages for the latter; in this caſe, if the King *de facto* prevail, there is no need of the Aſſiſtance of this Statute: for we cannot imagine any Prince could be ſo impolitick as to puniſh thoſe who have ventured their All to maintain him in his Government. This, beſides the Ingratitude of the Action, would proclaim the Injuſtice of his Cauſe, and would ſerve only to ruin his Intereſt. A. 11 H. 7. *p.* 5, 6.

F. Notwithſtanding this Objection you have now made, I doubt not but this Clauſe will bear a very fair and legal Interpretation, and that not in reſpect of the Allegiance that might be due to the King *de facto*, but to the King *de jure*; ſince if it were not for the Indemnity provided by this Statute, the King *de facto* would have been obliged to have puniſhed them for oppoſing their lawful Prince.

M. This is eaſily anſwered, for pray do Kings *de facto* always perform that which the Law requires? if ſo, they never would have been Kings *de facto*, ſince they could not make themſelves Maſters of the Sovereign Power without diſpoſſeſſing thoſe who are ſuppoſed the right Owners of it. Secondly, the Poſſeſſor would not ſo much as ſeem obliged to puniſh his Adherents upon a competition, except he owned himſelf to be no more than an unjuſt Uſurper: but we have neither example nor reaſon to expect ſuch ſingular Conceſſions as theſe; for no Uſurper will own himſelf in the wrong, ſo long as he intends to enjoy the Advantages of his Injuſtice. Upon ſuppoſition therefore, that the Victory had fallen on the ſide of a King *de facto*, the Act would be wholly ſuperfluous.

F. But why may we not alſo ſuppoſe that this Clauſe was inſerted, not only to ſecure thoſe who had aſſiſted the King *de facto* againſt your King *de jure*, but alſo to debar all thoſe who had fallen from their Allegiance to the King *de facto*, from receiving any Benefit by this Act, if ever they ſhould plead it in their own Juſtification, after the King *de jure* had prevailed, and was again ſettled in the Throne?

M. You may take it in this ſenſe if you pleaſe, but if you do, it will not at all mend the matter; for tho thoſe that ſtood by the King *de facto* will have great occaſion for an Act of Indemnity, yet this Act will be as helpleſs to them now, as it was needleſs before; for either they muſt ſubmit to the King *de jure*, or not: if they do not ſubmit, it is eaſy to imagine the Conſequences, how a victorious and irreſiſtible Prince will treat the obſtinate and rebellious Oppoſers of his juſt Title; if they do ſubmit (as of neceſſity they muſt) then they can claim no manner of Privilege and Indemnity from this Act: for they cannot come into the Party of the King *de jure*, without deſerting that *de facto*; *i. e.* without declining their Allegiance to him, who was King when this Statute was made: by declining which Allegiance, the Proviſo expreſly excludes them from all manner of Benefit or Advantage by this Ibid. *p.* 6.

this Act. In this condition the Law would have left the *de facto* Party, if the Sovereignty had been disputed between *Henry* the Seventh and the House of *York*, and that the Prince *de jure* of the House of *York* had been successful: From whence it is undeniably plain, that neither the Design nor Words of this Statute can be drawn to such a monstrous Construction, as to enact bare Possession to be a good Title, and make Might and Right the same thing. The only Design of this Parliament was to continue the Crown to *Henry* the Seventh during his life-time, which both by the Body and Proviso of the Act was as effectually done as in them lay, for divers Reasons that might then prevail with the two Houses to consent to a temporary Alteration of the Succession to the Crown: such as these, That tho *Henry* the Seventh had no just Title in his own Right, yet in the Right of his Wife he had, which he did no way disavow by this Act. And you must also remember, that at this time *Henry* the Seventh had several Children by his Queen, *viz.* Prince *Arthur*, *Henry*, &c. So that now the contending Families of *York* and *Lancaster* being thus happily united, there was no reason to fear, that a Security (tho an unusual one) to the present Possessor, could be prejudicial to the right Line, especially since the Force of that Act was confined to the Reign of that Prince, as has been already proved.

F. You may fancy if you please, that you have proved this Act to be expired, but I think if you better consider of it, you will find your self mistaken; for tho I may very well suppose that the King and Parliament, to deter Men from falling from their Allegiance to the King for the time being, might insert this Clause, upon a supposition that the next King, whoever he was, whether by Right of Blood, or only *de facto*, would, out of a generous Aversion to Traitors and Deserters, hinder them by virtue of this Clause from enjoying any Benefit by this Act; yet I shall not longer insist upon't, whether it be insignificant or not, and therefore will at present grant it to be so: but what then? Will a void Clause vitiate or render expired an Act of Parliament which is made indefinitely, without fixing it to any Time or Person? The words in the Act are, *the King for the time being*; which must certainly extend to any other King, as well as *Henry* the Seventh: for I suppose that an Act of Parliament and a Deed agree in this, that an unnecessary Clause can by no means render the whole void.

But as for what you say in relation to this Act's being a Security for the Title of the Queen and her Children (whom you suppose to be the right Heirs of the Crown) this rather serves to strengthen the Act than otherwise; for if this King had a good Title in her Right, then it may be also very well supposed that she gave her Assent to this Act in the Person of her Husband, and that not for the benefit, but to the prejudice of her own Issue: since if after her Death (which happened some years before his) her Son Prince *Henry* of *Wales* had set up his present Title to the Crown in the Right of his Mother, and so would have dethroned his Father as an Usurper, I suppose no reasonable Man will deny but that this Act would have indemnified all those who had taken up Arms in defence of King *Henry* the Seventh against his Son, tho (in your sense) King *de jure*: and if it would justify the Subjects then, I cannot see why it may not do the same thing now in their swearing Allegiance, nay, fighting for the King in possession, against him whom we will for the present suppose to be King *de jure*.

M. Well, however I think I can prove that this Act was no more than temporary, from the Judgment of the Judges in the Case of *John* Duke of *Northumberland*; who when he was tried for Treason, for leading an Army against Queen *Mary*, to settle the Lady *Jane Gray* in the Throne, desired to be informed by the Judges, whether a Man acting by the Authority of the Great Seal, and the Order of the Privy Council (or Prince's Council, as *Stow* and *Heylin* word it) could become thereby guilty of Treason: To which all the Judges answered, that the Great Seal of one that was not lawful Queen, could give no Authority or Indemnity to those that acted by such a Warrant; upon which the Duke submitted: tho without question he did not want Lawyers to enforce his Plea with this Statute likewise, if his Cause would have borne it. From whence I infer against Sir *Edward Coke*, That Treason lies against a King *de jure*, tho out of possession; for it is plain by all our Historians, that Queen

A. 11 H. 7. *f.* 56.

Mary

Mary was ſo far from being poſſeſſed of the Crown when the Duke of *Northumberland* acted againſt her, that the Lady *Jane* was not only proclaimed Queen in *London*, and moſt of all the Cities and great Towns in *England*, but the Tower of *London*, with all the Forts and Naval Forces, were under her Command; and ſhe had alſo Allegiance ſworn to her by the Privy Council, and by the Lord Mayor and Aldermen: and ſhe had alſo the Seals in her power, by which all Patents and Commiſſions were granted and iſſued in her Name. And if all this be not ſufficient to conſtitute her Queen *de facto*, according to this Statute of *Henry* the Seventh, I know not what was.

F. Yet I can tell you what was yet wanting, which becauſe ſhe had not, ſhe was certainly neither Queen *de jure*, nor *de facto*, and that was a ſolemn Coronation and Recognition of her Right by Parliament; which legal Inveſtiture ſince ſhe never had, ſhe was not the Queen for the time being, and conſequently not intended within this Statute of the 11th of *Henry* the Seventh: for tho it is true, ſhe was appointed Succeſſor of the Crown by the Letters Patent of King *Edward* the Sixth, yet ſince ſhe could not claim by Right of Blood, there being ſo many before her, all the Kingdom looked upon it as an Uſurpation, and an Artifice of the Duke of *Northumberland* (whoſe Son ſhe had married) to get the Government of the Kingdom into his ſole power: ſo that it was no wonder if the greater part of the People were ſo averſe to her Title, and that thoſe of the Nobility who took her part, ſo quickly revolted from her, when once the fear they were in of the Duke of *Northumberland*'s Power was removed; for had this Bequeſt of the Crown to the Lady *Jane* held good, this Kingdom, inſtead of being Hereditary, would have become wholly Teſtamentary, and diſpoſable by the laſt Will or Letters Patent of the King or Queen for the time being, without the Conſent of the Great Council of the Nation: which is contrary not only to the then received Laws of Succeſſion, but alſo to the antient Conſtitution of the Kingdom, as well before as after the Conqueſt.

But notwithſtanding all this, I doubt not if the Lady *Jane* had ſo far prevailed againſt Queen *Mary*, as to have been able to call a Parliament, and to have had her Title owned and recognized therein, as it was in the Caſe of *Richard* the Third and *Henry* the Seventh, but that ſhe would have been true and lawful Queen, according to the Intent of the Statute we are now diſcourſing of; and then the Duke of *Northumberland* muſt likewiſe (if he had fair play) have been indemnified for taking up Arms in her Defence againſt Queen *Mary*, ſince Queen *Jane* would have been then within the Letter of this Statute, as much as King *Henry* the Seventh.

M. You muſt pardon me if I cannot be of your Opinion in this matter, ſince if the bare Coronation and Recognition by Parliament could confer a legal Right to the Crown upon one who had no Hereditary Right to it before, the Conſequence of it would be, that the Crown would be ſo far from being Elective (as you ſuppoſe it to have antiently been) that it would be in the power of every bold Uſurper or Rebel, who had but the Confidence to call himſelf King, to gain a legal Title to be ſo, according to your Principles: and then if *Oliver Cromwel* could have found a Party ſtrong enough in the Army to have declared him King, and had called a Parliament in his own Name, who had recognized him for their lawful Sovereign, he would then have had as much Right to our Allegiance as King *Charles* the Second; which certainly was not only contrary to the Settlement of the Crown upon King *Henry* the Seventh, and the Heirs of his Body, but alſo to that ſolemn Recognition of King *James* the Firſt's Title, as lineally deſcended as right Heir to the ſaid King *Henry*, which I inſiſted on at our laſt Meeting.

And therefore if you will have my ſenſe of this Act, it is either expired (for the Reaſons I have already given) or elſe was void *ab initio*; ſince it is not only contrary to the ſettled Courſe of Succeſſion of the Crown according to the Laws of lineal Deſcent for divers hundred years paſt, but alſo to thoſe of Juſtice and right Reaſon, for an Uſurper not only to ſeize the Throne by force, but if he can once get himſelf ſolemnly crowned, and then recognized by an Act of Parliament of his own calling (which you your ſelf cannot deny but to have been ever too obſequious to the Will and Power of Uſurpers, as appears by thoſe Inſtances you have given me in *Henry* the Fourth, *Henry* the Sixth, and

Richard III.) the Conſequence will then be, that the whole Nation would not be only bound to ſwear Allegiance to him, but would be alſo oblig'd by this Act to defend him in his Tyranny and Uſurpation to the utmoſt of their Power, and it would alſo indemnify them for ſo doing; which would be to eſtabliſh Iniquity by a Law, and would deſtroy all the ſettled Foundations of Right and Wrong, which I affirm God himſelf is not able to alter, without departing from thoſe great Attributes of Immutability and Juſtice, ſo eſſential to his Divine Nature.

F. It will not be very difficult to reply to theſe Arguments, ſince they are grounded on ſuch falſe Principles as are already anſwer'd. As firſt, that this Kingdom is by the fundamental Conſtitution of it an Hereditary Monarchy, and that conſequently none but he who has a Right by Inheritance can require our Allegiance. But pray tell me where you can find this fundamental Conſtitution? For I think I have ſufficiently prov'd that there never was any ſuch thing known in *England*, till between four and five hundred Years ſince, when King *Edward* I. ſucceeded to his Father *Henry* III. without any Bequeſt of the Crown by his Teſtament, and before any Election or Coronation, he being then
C. *A.* p. 57. in the Holy-Land. But ſuppoſe it now to be an Hereditary Monarchy, it doth not therefore follow, that the Monarchy ſhould continue always in ſuch a Family, for that may fail, or may be chang'd by Conqueſt or Uſurpation, as has often been, and the Conſtitution continue. So that the moſt that can be ſaid, is, that when any particular Family, by the Providence of God, and the Conſent and Submiſſion of the People, is plac'd in the Throne, of Right the Crown ought to deſcend to the Heir of that Family: but ſuppoſe it does not, muſt we pay Allegiance to no other Perſon, tho poſſeſſed of the Throne? Pray, Sir, ſhew me that fundamental Conſtitution; for its being an Hereditary Monarchy does not prove it, and according to the Judgment of the beſt Lawyers, the Laws of the Land require the contrary, *viz.* that we muſt pay our Allegiance to him who is actually King, not to him who ought to have been King, but is not: and to think to confute this, by pretending this fundamental Conſtitution of an Hereditary Monarchy, is to take that for granted, which is ſtill to be prov'd.

And therefore I am not at all frighted at the dreadful Conſequences which you ſuppoſe muſt follow if this Statute of *Henry* VII. ſhould be Law, *viz.* that it would be in the power of every Rebel and Uſurper who could get himſelf crown'd, and then own'd to be King by a Parliament of his own calling, to have a legal Right to our Allegiance; and that *Cromwell*, if he could have got himſelf once crown'd, and recogniz'd, might have been defended in his unjuſt Uſurpation againſt King *Charles* II. But admit this to have been ſo; yet it is ſtill to be underſtood, that at this Coronation he had taken the Oath antiently taken by our Kings, and that the Parliament he had ſummon'd to recognize his Title, had conſiſted of the antient Lords and Commons, conſiſting of Knights, Citizens and Burgeſſes, which never was obſerv'd in any of thoſe Mock-Parliaments which *Cromwell* call'd: Had all theſe Conditions been obſerv'd, I believe he would have been as legal a King within this Statute of *Henry* VII. as he himſelf ever was before he married with the Princeſs *Elizabeth*, which was not till near half a Year after he had the Crown ſettled upon him by Act of Parliament. So that tho upon every Tranſlation of the Crown from one Family to another, the firſt Prince of that Family could have no Hereditary Right to it, yet we find ſuch Princes to this day taken for lawful Kings. Thus your *William* the Conqueror, King *Henry* IV. and King *Henry* VII. are each of them look'd upon as true and lawful Kings (according to our Conſtitution) as if they had been right Heirs of the Crown by lineal Deſcent; and tho you may ſay, that as to *William* I. he had a good right by Conqueſt, that is only *gratis dictum*, ſince I have already prov'd that he could be really no Conqueror. And if the *Engliſh Saxon* Monarchy was Hereditary before the Conqueſt (as the Gentlemen of your opinion ſuppoſe) he could be no other than a Uſurper upon *Edgar Atheling*, the right Heir of the Crown by Blood. And as for *Henry* IV. and *Henry* VII. tho they both pretended a feign'd Title to the Crown as Heirs by Blood, yet it is plain by the very Acts of Recognition I have cited, that they durſt not inſiſt upon that Title; ſince I have already prov'd there is no ſuch thing mention'd in that Act of Parliament, wherein the Eſtates of the Kingdom unanimouſly

unanimouſly agreed that *Henry* Duke of *Lancaſter* ſhould reign over them; nor yet in the ſubſequent Act, whereby the Crown was intail'd upon himſelf, and his four Sons ſucceſſively. So likewiſe in the Statute of the firſt of *Henry* VII. it is only drawn in general Terms; "declaring that the Inheritance of the Crown "of *England*, &c. ſhall reſt, remain, and abide in the Perſon of King *Henry* "VII. and the Heirs of his Body lawfully coming, *&c.*" Nor is there indeed any Breach made upon this Statute (as you ſuppoſe) nor yet upon the Act of Recognition of King *James*, which you ſo much inſiſt upon; ſince the Crown is certainly ſettled upon two Princes, who are not only lineally deſcended from them, but who are alſo to be look'd upon as right Heirs unto them, ſince the Great Council of the Nation, who are the ſupreme Judges, have declar'd them to be ſo.

But as for the reſt of your Speech, whereby you would prove that this Act muſt needs be void, becauſe contrary to the Laws of Juſtice and right Reaſon; this alſo depends upon your former Error, in ſuppoſing that Princes have a Divine or Natural Right to their Crowns antecedent to the municipal Laws of their reſpective Kingdoms, which is already ſufficiently confuted. So that tho I grant it is not in the power of God himſelf to alter the natural Foundations of Right and Wrong, Juſt and Unjuſt; yet it is likewiſe as certain that the Civil Rights of Princes, as well as thoſe of Subjects, can no ways be accounted for according to thoſe Natural Laws; ſince all Civil Property, as well in Crowns as other Poſſeſſions, muſt depend upon the particular Laws and Conſtitutions of each Kingdom and Nation, as I have already ſufficiently made out.

And therefore tho I grant that all legal Authority ought ſtill to go according to juſt or rightful Titles, yet ſince God makes no Kings at this day, but thoſe who are made Kings by ſome human Acts, and have a legal Right to Kingſhip by ſome human Laws; how can you prove from hence, that in *England* none can have a legal Right to govern, but thoſe who have the rightful Title of a lineal Succeſſion? For if the Title alone does not confer the Authority, but that the Law ſays a legal Inveſtiture by Coronation and Recognition by Parliament ſhall alſo confer it, it is evident that an Hereditary Title, and a Legal Authority, may be ſeparated, and yet the Authority continue Legal ſtill: for Legal Authority muſt be convey'd in ſuch manner, and by ſuch forms as the Law has preſcrib'd, or appoints to that purpoſe, for there is no other way of conveying it; and then that Authority which is ſo given in form of Law (and that only) is the legal Authority. If then the Eſtates of the Realm, who are the only proper Judges of ſuch Diſputes, have adjudg'd the Crown to one, whom we will at preſent ſuppoſe to have no antecedent legal Title to it, yet he thereby becomes legally poſſeſſed, not only of the external Force and Power, but of the legal Authority of the Government alſo; and therefore he may challenge as his due, all legal Obedience, (which is the true notion of Allegiance, for nothing more than legal Obedience can be due to a mere legal Authority:) ſo that becauſe he is inveſted with the legal Authority, the Crown is his legal Property, againſt all other Claims, and his Subjects muſt defend him in it; as the legal Properties of private Perſons being once determin'd by Judgments of inferior Courts of Law, are alſo to be defended by the Civil Power againſt the force of him who perhaps may have the better Title to the Eſtate by Right of Blood. And if God makes Kings by human Acts, I hope it is no injuſtice in God to make him a King, whom the Law makes a King, and to enjoin our Obedience to a legal King; which legal Authority may be ſaid to be annex'd to the legal Title, while there is no legal Judgment againſt it: which was not the Caſe of Queen *Mary*, and the Lady *Jane* her Competitor; nor yet of King *Charles* II. and *Oliver Cromwell*: ſince neither the one or the other were ever crown'd or acknowledg'd as lawful Queen, or King by Parliament, and therefore could obtain no legal Title againſt the right Heirs. But on the other ſide, when one is ſolemnly declar'd King or Queen, being crown'd or plac'd on the Throne by the Eſtates of the Realm, he is then legal King, and has the legal Authority, as the Royal Eſtate and Dignity was own'd to be in *Henry* VI. when the Duke of *York* claim'd the Right to the Crown.

E. L. R. p. 25, 26.

M. I am not yet convinc'd I am miſtaken in this matter; for waving at preſent any natural or divine Rights of Princes, I think this Act of *Henry* VII. (if ſuppos'd to be now in force) is no ways to be reconcil'd with the former declar'd

Laws

Laws and Statutes of the Kingdom; much leſs can this laſt pretended Act of Recognition of King *William* and Queen *Mary* reverſe the Statute of Recognition made to King *James* I. whereby the Parliament does not only own him for true and lawful King by deſcent from *Henry* VII. and *Edward* IV. but alſo engage themſelves and their Poſterities to his Majeſty, and his Royal Progeny for ever. And they do likewiſe conclude in theſe words, (I have not yet mention'd) "Which Act, if your Majeſty ſhall be pleaſed (as an Argument of your gra-"cious Acceptation) to adorn with your Majeſty's Royal Aſſent (without "which it can neither be compleat and perfect, nor remain to all Poſterity, "according to our moſt humble deſires, as a Memorial of your princely and "tender Affection towards us) we ſhall add this alſo to the reſt of your Ma-"jeſty's unſpeakable and ineſtimable Benefits". Here they plainly acknowledge theſe two things. Firſt, That the Crown deſcends by Proximity of Blood, and that immediately, even before any Ceremony of Coronation, or otherwiſe; ſo that there can be no *Interregnum*, or Vacancy of the Throne; and accordingly it is a maxim in Law, that *Rex non moritur*. Secondly, That the Aſſent of the King is that which gives the Life, Being, and Vigour to the Laws, without which they are of no force: therefore I ſhall plainly prove theſe Acts to the contrary to be void. It is a Maxim in our Civil as well as your Common Law, that every *Senatus-Conſultum*, or Decree of the Senate, as alſo every Statute or Act of Parliament, muſt be abrogated and repeal'd by the ſame Authority by which it was made. Since therefore that Act of the firſt of *Edward* IV. whereby he was declar'd to be lawful King, as deſcended from *Lionel* Duke of *Clarence*, third Son of *Edward* III. by *Philippa* his Daughter and Heir, and that *Henry* IV. and *Henry* VI. who had ſucceſſively held the Crown, were Uſurpers, and only pretended Kings; it would neceſſarily follow, that none can after this ſo ſolemn Law and Declaration, lawfully ſucceed to the Crown of this Realm, but ſuch as have a true and juſt Right as Heirs by Blood, according to the courſe of deſcent allow'd of by the common Laws of this Kingdom: and therefore *Henry* VII. being an Uſurper, and enjoying no more than a Matrimonial Crown, could not join with a Parliament in making any Law contrary to that of the firſt of *Edward* IV. which had been ſo ſolemnly paſt, and ſettled in Parliament by a King whoſe Title was by deſcent indiſputable.

So likewiſe in the matter now in diſpute between us, I can never apprehend how a pretended Statute made in a Convention, and not in a lawful Parliament ſummon'd by the King, can firſt declare the Throne vacant, and then appoint thoſe to fill it, who certainly can have no juſt Title to it, according to that Act of Recognition of King *James*; "which expreſly declares, that they "themſelves could not have made that Act to be compleat and perfect to remain "to all Poſterity, without his Royal Aſſent." Which being once paſt into a Law, by a King whoſe Title was indiſputable, can never afterwards be alter'd (if ever it can be at all) but by a Parliament as legally call'd, and that by a King whoſe Title is alſo as legal as that of King *James* I. This Objection, tho I have often urg'd in other words, yet could I never yet obtain a ſatisfactory anſwer from you.

F. Tho I have already in part anſwer'd this Objection at our laſt Meeting, and have alſo partly done it already in this; yet ſince I ſee you ſo much inſiſt upon it, and do alſo urge it again in other words, with a freſh addition of new Arguments; I hope you will not think me tedious, if I am alſo neceſſitated to repeat the ſame things again, and put you in mind of what I have already prov'd: which when I have done, I doubt not but this Argument of yours will ſignify very little. Your firſt miſtake therefore is, that *Henry* VII. being an Uſurper, had no power to alter the courſe of Hereditary Succeſſion, ſettled by the Statute of the firſt of *Edward* IV. whereby he was declar'd lawful King: in anſwer to which, I muſt put you in mind, that this was the firſt time that ever this Point was ſo ſettled, and that not till after a long War, and by ſubduing all thoſe that held with the Houſe of *Lancaſter*, he had made ſuch a perfect Conqueſt of all that oppos'd him, that there were no Lords or Commons in this Parliament, but what were intirely of his Party. Yet we ſee that when *Henry* VI. got the upper hand again, his Party revers'd this Statute of *Edward* IV. and declar'd the Crown to belong to *Henry* VI. and his Heirs; which

which Act was reverſed again by the next Parliament, in the 11th of *Edward* IV. when he again recovered the Crown by another Battel againſt *Henry* VI. So evident it is, that whoever is once ſeated in the Throne, and is recognized by Act of Parliament, tho of his own ſummoning, all his Acts till they are repealed do hold good, tho he were declared an Uſurper, and himſelf attainted by Act of Parliament. And therefore admitting that *Henry* VII. was an Uſurper at the time when this Act we now diſcourſe of was made, yet would it not render this Act void as you ſuppoſe, ſince it was never yet repealed by any ſubſequent Statute.

But indeed *Henry* VII. was no Uſurper at the time when this Statute was made; for you your ſelf have already granted, that he had a good Title in right of his Wife, which he never renounced or diſavowed: and therefore we may very well ſuppoſe that ſhe, tho Queen *de jure*, gave her tacit Conſent to this Act in the Perſon of her Husband; and if ſo, I cannot ſee any reaſon why it ſhould not ſtand good, not only againſt her ſelf, and her own Children, but alſo againſt all others who ſhould claim under her Title. But if you ſay ſhe could not do this in prejudice of her own right Heirs, becauſe the Crown had been already declared by Act of Parliament to be hereditary, and not to be acquired by Uſurpation; this is to beg the Queſtion, and to ſuppoſe an hereditary Deſcent to have been the fundamental Law, and conſtant Practice of the Succeſſion of the Crown before that time: whereas I have already proved, that till the Reign of *Edward* I. the Crown was partly hereditary, and partly elective; and ever ſince that time, tho it has been ſtill claimed as hereditary, yet has it been always believed to be the Right of the Parliament to declare who was lawful King; and that whoſoever was ſo declared and recognized, has been always looked upon, in the eye of the Law, as the only rightful and legal King, to whom the Allegiance of the Subjects was due, and whoſe Statutes are obligatory at this day.

This being ſo (as it cannot be denied) your Argument from the Act of Recognition to King *James* I. may be eaſily anſwered; tho I ſhould grant at preſent (for Diſcourſe-ſake) that their now Majeſties King *William* and Queen *Mary* are only King and Queen *de facto*: for if all the Statutes of theſe three Kings of the Houſe of *Lancaſter*, and of *Richard* III. (nay even thoſe Statutes by which themſelves were declared to be lawful Kings, and the Crown ſettled upon them and their Iſſue) have at all times held good, till they were lawfully repealed; I deſire you would ſhew me any ſufficient reaſon why the late Act of Recognition of their preſent Majeſties Title, and for the Settlement of the Crown upon their right Heirs of the Proteſtant Religion, ſhould not have the like force and effect in reſpect of our Allegiance to them, as it had to all other Kings *de facto* who have hitherto ſat upon the Throne, tho perhaps it may derogate from the intent of that Statute of Recognition of King *James* I. nor does it make any Difference, tho we ſuppoſe that this Act was made by a King by Deſcent, and that we now diſcourſe only of a King and Queen *de facto*, and a Parliament called or owned by them; ſince the Law allows no Difference, as to their Legiſlative Power, between Acts made by a King *de facto*, and one *de jure*.

And therefore tho I grant, (1.) That thoſe Concluſions you draw from this Statute are true, that there is no Interregnum or Vacancy of the Throne; and, (2.) That the Aſſent of the King is that which gives the Life, Being, and Vigour to the Laws: yet as for your firſt Concluſion, that there can be no Vacancy of the Throne, it is only to be underſtood, that ordinarily, and according to the common Courſe of Succeſſion, there can be none; and yet extraordinarily there may, as you your ſelf muſt grant: ſince upon the Death of Queen *Elizabeth* there might have happened a Conteſt between King *James* and the then Earl of *Hertford*, as Heir to *Mary* the *French* Queen, ſecond Siſter to King *Henry* VIII. upon whoſe Heirs the Crown was ſettled by *Henry* VIII's Will, as I have already mentioned at our laſt Meeting. And if it had been a Doubt whether this Will had been rightly made or not, it could have been no otherwiſe decided but by War, or elſe the ſolemn Judgment and Recognition of Parliament of that Title they had judged to be beſt; and he who had been ſo declared, would certainly have been lawful King, and all the Nation had been obliged to ſwear Allegiance to him. Apply this to the preſent Caſe, admitting King

James

James to have truly abdicated the Throne, and ſee whether it be not exactly the ſame, ſuppoſing (for once) your Prince of *Wales* to have been indeed the Son of the late King and Queen; and tho it is true he is not yet declared an Impoſtor, yet is he neither acknowledged as their right Heir, for the Reaſons I have already given.

But as for your next Concluſion, that it is the Aſſent of the lawful King that gives Force and Vigour to a Law; from whence you would infer, that the late Act of Recognition and Settlement is void, becauſe not made by thoſe who were lawful King and Queen at the time of the making this Act: this is alſo to beg the Queſtion. For tho it is true the Act of Recognition to King *James* declares this Act could not be compleat without his Majeſty's Royal Aſſent, yet it is not there ſaid, that no other King but he who claims by Deſcent (as King *James* did) could paſs an Act that ſhould be good in Law; ſince we find by the whole Courſe both of Law and Hiſtory, that the Statutes made by Kings *de facto* are as truly and as much Laws as thoſe made by your Kings *de jure*; and Attainders for Treaſon committed againſt them, have been ſo far from being declared void, that they could not be reverſed by any other means than by particular Acts of Parliament made for that purpoſe, as I have already ſhewn you from divers Inſtances, both from Hiſtory and Records. Nor is your Exception againſt the preſent Parliament's not being called by the King's Writ of any force: ſince I have already proved at our laſt Meeting, from the Example of the Great Council that aſſembled to recognize and ordain *Edward* the Firſt to be King when he was in the Holy Land; as alſo by the Parliaments of *Edward* and *Richard* the Second, by which they were depoſed, and *Edward* the Third and *Henry* the Fourth declared to be their Succeſſors; That thoſe Parliaments could not be ſummoned by thoſe Princes whom they ſo recognized: and therefore tho they were called by the Writs of the former Kings, yet their Authority determined as the Parliament of that King that called them, upon his ceaſing to be King; and therefore muſt owe their ſitting longer wholly to the Authority of him they had already declared King, whoſe Preſence and Authority was then looked upon as ſufficient to give them power to ſit and make Laws with the ſucceeding King, tho they were never ſummoned by him.

To theſe Parliaments I may add that of the firſt of King *Charles* the Second, which called home the King, and after his Return made ſeveral Statutes both publick and private, which ſtand good to this day: ſo that to conclude, you have no reaſon either from Law or Hiſtory to maintain that there can be no Vacancy of the Throne, or that none can be declared King or Queen, but in a Parliament ſummoned by the Writs of that Prince, whoſe Title they are to recognize.

M. I ſhall not deny the Matters of Fact to have been as you lay them, as to the Great Councils or Parliaments you mention; but in anſwer to this you may remember, that as for thoſe Parliaments called in the Name of *Edward* or *Richard* the Second, there is no Precedent to be drawn from them, becauſe they ſerved only to depoſe their lawful Kings, and to ſet up thoſe who had no Right, at leaſt as long as they lived: and you very well know, that any coercive Power in the two Houſes of Parliament over the King, is expreſly renounced and declared againſt in the Parliament of the thirteenth of K. *Charles* the Second, as I have already ſhewn you. But as for the Convention which was called in the firſt Year of that King, I have alſo given you my Judgment of it, that tho they might lawfully meet to vote the Return of their lawful Sovereign, and to recognize his Title, yet were they not for all that a lawful Parliament, as to the raiſing of Moneys, or making of Laws; and therefore whatever they did to both theſe, was fain to be confirmed by the Parliament of the Thirteenth I now mentioned.

But indeed I cannot but admire at this mungrel hodge-podge Courſe of Succeſſion, which you now ſuppoſe to take place in *England*; for you cannot deny but the Crown is Hereditary, and has been always claimed as ſuch for near 500 Years: and yet for all that, whenever an Uſurper and a Parliament ſhall agree together, he to take the Crown by force, and they to recognize his Title as ſoon as he pleaſes to call them, he muſt then be looked upon as a lawful King; and the juſt and rightful Title of the true King, or lawful Heir of the Crown, ſhall be ſo far deſtroyed, as that Allegiance muſt be due to this Uſurper,

per, tho perhaps he obtained the Crown by the moſt horrid Villanies in the World: as the depoſing and murdering of his lawful Sovereign, as *Henry* the Fourth did, and which would alſo have been the Caſe of *Oliver Cromwel*, had he ever taken upon him the Title of King. So that this is to ſet on foot at once two contrary legal Rights; a legal Right and Title to the Crown by Deſcent of Blood, without a Right to exerciſe the Authority belonging to a King, and a legal Right to wear the Crown, and exerciſe the Authority belonging to it, without any antecedent legal Right to the Crown it ſelf: which would indeed render the legal Authority in *England* to be like the Right that Men have to thoſe Creatures that are *feræ naturæ*, which belong to him who can get them into his power; for as to the Conſent or Recognition of Parliament, I look upon that as a mere bauble, ſince your ſelf cannot ſhew me any Uſurper ſince the Conqueſt, tho ever ſo wicked and notorious, who ever failed to have his Title ſo recognized and confirmed by Parliament, as you your ſelf cannot deny; which methinks is a high Derogation from the Dignity of a true Hereditary Monarchy, ſuch as ours is, or as leaſt ought to be.

F. I ſhall reply but this once upon this Head, ſince I ſee there can be nothing new ſaid upon it; and therefore you your ſelf are forc'd to repeat what you have already urged at our laſt Meeting, only you ſtrive to ſupport it by freſh Authorities: therefore as to the Parliaments which depoſed King *Edward* and *Richard* the Second, I cannot blame you for denying them to be lawful Precedents, becauſe they make directly againſt your Opinion; but you ſay nothing to that of the firſt Great Council or Parliament of *Edward* the Firſt, which not only ordained he ſhould be King, but alſo appointed all the Great Officers of the Kingdom which were to govern it in his abſence. But you may deny the Authority of thoſe Parliaments of the firſt of *Edward* the Third, and firſt of *Henry* the Fourth, as much as you pleaſe in a Chamber: but if you ſhould do the like at *Weſtminſter-Hall* againſt any Act of Parliament, becauſe made whilſt *Edward* or *Richard* the Second were living, you would ſoon be over-ruled, and told that thoſe Laws ſtill continued in force and unrepealed, and it did not belong to private Men to queſtion thoſe Acts that have been hitherto received for Law.

But as for what you have ſaid againſt the Authority of the Acts of that Parliament that brought in the King, I have already proved that they were only confirmed *ex abundanti cautela*; and that they had been good without it, appears by this, that all their private Acts, tho never confirmed in the following Parliament, are ſtill in force. But if the ſolemn Recognition of a King's Title by Parliament be ſuch a bauble, and ſo eaſily obtained (as you ſuppoſe) I may ſay the ſame of that Act which recognized King *James* the Firſt's Title, that it was done merely out of Flattery upon his Acceſſion to the Crown: nor can you reply that they might do this, becauſe he was the only right Heir; this is to beg the Queſtion, ſince if he had not been ſo, it would have been all one, as you your ſelf confeſs.

As for the reſt of your Arguments, which you draw from the different means which our Law allows for Princes ſucceeding to the Crown, which you call a mungrel hodge-podge Courſe of Succeſſion, and that it derogates from the Dignity of a true Hereditary Monarchy; I ſhall only ſay, that if our Law has now eſtabliſhed it ſo, no private Man ought to judge otherwiſe; for *nemo debet eſſe ſapientior legibus*, is a Maxim as old as true. But indeed tho our Laws do eſtabliſh a legal Right in the preſent Poſſeſſor of the Crown, when once crowned, and recognized by Parliament, ſince they will not allow the Parliament to judge of, or examine the King's Title, or by what means he attain'd the Throne; yet this does not alter the ordinary Hereditary Courſe of Succeſſion, for the Law ſtill looks upon the Crown as Hereditary, and the Change of the Perſon or Royal Family does not make the Crown ceaſe to be ſo. And therefore whoever has Poſſeſſion of the Crown, has an Hereditary Crown, and as ſuch, may leave it to his Heirs as long as they can keep it; as is plain from the Example of the three *Henrys* who ſucceeded each other, and who had not only Allegiance ſworn to them, but they who acted contrary thereunto, were judged and executed as Traitors: ſo that the Law did all it could to maintain the Crown in the right Line of Succeſſion. And if any Kings have gained it by Uſurpation, tho the Parliament have owned the Authority of ſuch an

Uſurper, yet have they not thereby approved the Action: and you your ſelf muſt acknowledge a great difference between theſe two, ſince you have more than once acknowledged that an Uſurper, or King in Poſſeſſion, has a good Title to a Crown, in caſe all the right Heirs are extinct, or by their not claiming it for any long time, are ſuppoſed to have made a tacit Ceſſion of their Right; ſince it is not ſo much to the Perſon, as to the Authority (which we grant to be from God) that we pay our Obedience.

But let us alſo for once ſuppoſe that there may be a legal Title to a Crown without a Right to exerciſe the Authority belonging to it, and a legal Right to wear the Crown, and exerciſe the Authority belonging to it, without an antecedent legal Right to the Crown it ſelf; this is no ſuch Abſurdity as you
E. L. R. *p.* 18. ſuppoſe, if you pleaſe to conſider that allowed Diſtinction between *jus ad rem*, and *jus in re*, with the reaſon of it: for 'tis an approved Diſtinction in Law, that one may have a Right to a thing, and another a Right in it; the one is a Right of a legal Claim, the other of a legal Poſſeſſion: And that this may and muſt be in all Civil Governments, and mere legal Rights, appears from the different Laws and Cuſtoms on which ſuch different Rights are founded. This I have hinted before, but muſt now explain it more particularly; in all Civil Societies there muſt be particular Laws to determine perſonal and particular Rights, and whatever is due to any Man by ſuch Laws, is his legal Right: But yet we know theſe Laws can determine no Controverſy without a living Judge; for if every Man were to judge for himſelf, every Man will make the Law to be on his ſide, and then we had as good have no Laws at all. And therefore the fundamental Law of all Societies, which is ſuperior to all particular Laws, is this, That the laſt and final Judgment of Authority ſhall be taken for Law, and that ſhall be every Man's Right as to all the Effects of Law, which is thus adjudged him. Whoever calmly conſiders theſe things, will find that it is impoſſible it ſhould be otherwiſe, without overturning all Civil Governments: And this I have proved to you from the Example of a right Owner of an Eſtate, when outed of his Poſſeſſion by a Verdict of a Jury and an unjuſt Judgment in one of the King's Courts, that no Man ought to reſtore him by Force to his Poſſeſſion, till he has again reverſed that unjuſt Judgment given againſt him.

M. Tho I grant this is true in the Caſe of private Perſons and their Inheritances, yet is it not ſo as to Princes, who hold their Crowns by a Title ſuperior to the ordinary Municipal Laws, and therefore are not only Kings by Law, but by Divine Right, and the fundamental Conſtitution of the Government, and ſo cannot have their Title adjudged by Parliament, as you ſuppoſe: for our beſt Divines have unanimouſly concluded out of Scripture, that all lawful Kings and their Royal Power is from God by Divine Right, and is not from the People, no not in Elective Kingdoms (ſuch as *Poland* for example;) for even there the conferring of the Royal Authority is from God, and not from any Law made by the People, and neither they nor their Repreſentatives have any thing to do to judge of it: for I would gladly know who made that Law which made the King; certainly the King did not make it, for that Law which made the King muſt of neceſſity precede and be before the King, who had his Royal Power and Kingly Office from that Law.

F. I ſee you are very hard put to it, ſince you are again forced to fly back to your old Covert of a Divine Right in Kings, which is not to be derived from any Law made by the Conſent of the People; and if this be true, I deſire you would ſhow me how Kings can at this day owe their Crowns immediately to God, and not to the Law, ſince God does no longer confer Kingdoms by any expreſs Deſignation of the Perſon, but by the ordinary Courſe of his Providence: and then pray tell me why all Princes whatſoever, when they are once ſeated in the Throne, let them come by it which way they will, muſt not derive their Power alike from God; and conſequently Kings, by an unjuſt Conqueſt or Uſurpation, are as much from God as thoſe who aſcend the Throne by the Conſent or Election of the People. For if the Peoples Conſent do no more than deſign the Perſon, but that it is God alone who gives him his Authority, then which way ſoever he obtains this Power of the Sword, which is the only Sign of God's conferring this Authority, it will be alſo the Ordinance of God; and conſequently their preſent Majeſties being once

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ſeated on the Throne, are upon theſe Principles as much to be obey'd as the Ordinance of God, as King *James*, or any other Hereditary Monarch whatever.

But if you do not like this Doctrine, and tell me of a legal ſucceſſive Right which King *James* and his right Heirs have to the Crown, according to the fundamental Conſtitution of the Nation; this is plainly to own the King to be ſo by the Law of the Land, tho in words you deny it: for every Hereditary Right is either a continued Uſurpation by Force, which can give no Right at all; or a Right by Law, which is by the Conſent of the People to entail the Crown on ſuch a Family: which certainly is to make a King by Law, that is, by the Conſent of the People. But if you will ſuppoſe that it was the Authority of the firſt King alone who thus entail'd the Crown upon himſelf and his right Heirs, I deſire you would ſhow me how the Crown could be ſo entail'd without the Conſent of the People, ſo as that his Succeſſor may not alter it, and give it by his laſt Will and Teſtament to which of his Sons or Daughters he pleaſes; ſince Sir *Robert Filmer* himſelf acknowledges, that a Teſtamentary Heir to a Crown in an abſolute Monarchy, is as much by Divine Right as if he had come in by Succeſſion; as appears by the Inſtances he gives in *Seth*, who could have no Right to ſucceed his Father *Adam* in the Government of Mankind, while *Cain* his elder Brother was alive, by the Will of *Adam* his Father. The like I may ſay of *Solomon*, who by his Father's crowning him King in his life-time, and thereby making him his Succeſſor, gave him a Right to rule over *Adonijah* his elder Brother. So that I may very well ask you, if the preſent Law of the Land did not proceed from the free Conſent of the People teſtified by long Cuſtom, or expreſs Declaration of the People by their Repreſentatives in Parliament; I deſire to know why the King of *England* cannot as well ſettle the Crown by his laſt Will upon which of the Blood-Royal he pleaſes, as that it ſhould be lawful for the *Engliſh-Saxon* Kings to exerciſe this Prerogative, as Dr. *Brady* ſuppoſes they did before the Conqueſt, without the Conſent of the Great Council of the Nation? So that I think I may much better ask you what that Law was, and who made it, which you ſuppoſe to make Kings prior to, and independent from the Conſent of the People; ſince if there be any ſuch Law, it is either as yet unknown to Mankind, or elſe all thoſe who are once poſſeſſed of Kingdoms, have an equal Title to them by Divine Right. But indeed it is only ſome Divines who were more ſcrupulous than knowing in Politicks, who firſt ſtarted this Queſtion, whereas indeed there is no ſuch great Myſtery in it: for that Law by which the firſt King of *England* for example was elected, was not in being before the King was made, nor yet was the King in being before that; but when the firſt King was made ſo, by the Conſent and Election of the People, the King, and the Law that made him ſo, began both together: that is, the People by chuſing of him to govern upon certain Conditions, and he, by accepting the Crown upon thoſe Conditions, was that Law by which he then took the Crown, and by which it has been held ever ſince that time. So that if the Crown ought to be enjoy'd according to a legal Right, and that there muſt be ſome Judges appointed of this Right, whenever any Diſputes may happen about it, either every Pretender to the Crown muſt judge for himſelf, and then he will be both Judge and Party in his own Cauſe, or elſe it muſt be left to the Conſcience of every individual Subject in *England* to ſide with what Party he pleaſes, that may thus pretend to it: and ſo there may be a dozen Competitors for the Crown at once, and all with equal Right, for ought that any body knows. Or laſtly, this Right muſt be left to the Determination of ſome Civil Judges to judge whoſe Right it is; and who can theſe Judges be, who ſhall thus judge what are the antient Laws of Succeſſion, and Rules of Allegiance, but the Great Council of the Nation? Therefore if they have already declared and recognized King *William* and Queen *Mary* to be lawful King and Queen of this Realm, I think every Subject of the ſame may very well juſtify their ſwearing Allegiance to them, not only by virtue of this Statute of the 11th of *Henry* the Seventh, which requires Allegiance to be paid to the King in being, but alſo from the Equity and Reaſonableneſs of the thing it ſelf, to hinder the Nation from falling together by the ears, and entailing Civil Wars from Generation to Generation, if the Subjects were obliged by their former Oath of

Allegiance to the King *de jure*, to endeavour to reſtore him by force of Arms. And therefore the Preamble to this Statute very well and truly ſets forth, "That it is not reaſonable, but againſt all Law, Reaſon, and good Conſcience, "that the Subjects going with their Sovereign Lord to the Wars, any thing "ſhould loſe or forfeit for doing this their true Duty and Service of Allegiance "to the King for the time being."

M. But pray tell me, is not this very ſtrange and unjuſt, and that by your own ſhowing, that a Prince ſhould have a legal Right and Title to the Crown, without a Right to exerciſe the Authority belonging thereunto? for they muſt now pay Allegiance to the King in being, let him be ever ſo great an Uſurper. So that indeed the Preamble to this Act is expreſly falſe, ſince I think it is very unreaſonable, nay againſt all Law, Reaſon, and good Conſcience, to ſwear Allegiance to an Uſurper; for by that means not only all good Subjects would be put out of a Capacity of endeavouring to reſtore the King *de jure* to his Throne, tho ever ſo unjuſtly depoſed or driven out, as in Duty they ought, but alſo thoſe who were inſtrumental in this Rebellion, and in depriving the lawful Prince of his juſt Rights, may not themſelves endeavour to reſtore him; which would put them out of all poſſibility of making amends for the wrong they have done him, and of making reſtitution, by again reſtoring him to his Throne.

F. If this be all the difficulty that is left upon your Mind, I doubt not but to prove to you, not only from the Law of the Land, that Allegiance may be lawfully ſworn in this caſe, but alſo that it is for the common Happineſs and Peace of the Nation, which is the main End of all Government, that it ſhould be ſo. And therefore I ſhall firſt freely grant, that tho it is Rebellion unjuſtly to deprive a King and his right Heirs of the Crown, and that thoſe who had a hand in it are bound in Conſcience to endeavour to reſtore him or them to their juſt Rights again; yet this muſt be done by no other Methods but what are conſiſtent with the publick Peace and Safety of the Commonwealth: for if a King *de facto* has once got poſſeſſion of the Throne, and has been crowned and recognized by Parliament, from what has been already proved, I think it is very plain, that they ought to obey him not only from the very Letter of this Law, but alſo becauſe I have now ſaid all private Perſons ought to ſubmit their Judgments in this matter to that of their Repreſentatives, who if they have judged falſely, are to bear the blame; but yet their Judgment for all that is to be held for good, till it be reverſed in the ſame way in which it was given: ſince if after ſuch a Recognition every private Perſon ſhould ſtill be
E. O. *p.* 57. free to pay his Allegiance to him whom he ſuppoſed King *de jure*, it would certainly follow, that the Civil Society or Commonwealth muſt of neceſſity fall into Civil Wars; which is againſt the nature of Civil Societies, and inconſiſtent with the Duty of Self-preſervation, which obligeth Men not to expoſe their Lives and Fortunes, but to obtain a greater Good than both thoſe, which can only be the publick Good of the Community, and not the ſingle Intereſt of any one Perſon or Family. And tho I grant it is a great Sin in thoſe who are inſtrumental in raiſing Rebellion, and who are thereby guilty of a very enormous Crime; yet that which made it ſo, was not barely the Injury they committed againſt the Prince to whom (if alone conſidered) the Breach of an Oath (in withdrawing their Allegiance) could be no greater a Sin than the Breach of an Oath to another Perſon; but indeed the fatal Miſchief and irreparable Damage they did the Commonwealth, is that which aggravates the Sin. And if a new Commotion to reſtore the King *de jure* would in all probability prove yet more deſtructive, and a Nation by being ſo much weakned by a former Civil War, be leſs able to bear a new Civil War, which may happen ſo far to the weakning of it, as to expoſe it to the Invaſion and Conqueſt of a foreign Nation, who may be Enemies both to our Religion and Civil Conſtitution; in ſuch a caſe I cannot think it our Duty to reſtore a Prince by force, tho ever ſo unjuſtly driven from his Throne. And therefore if I had been then a Man, tho I ſhould have been as much for bringing home King *Charles* as any body ought to be, yet I ſhould have been only for it in the way in which it was brought about; and ſhould never have deſired it, if it could not have been done but by an Army of *French* or *Iriſh* Papiſts. And the like I ſay now as to King *James*, ſeeing he is joined with the Intereſt of *France*, and is already gone into

into *Ireland* on purpoſe to renew the War, by the Arms and Aſſiſtance of thoſe, whoſe Fathers, as well as ſeveral of themſelves, did all they could to deſtroy not only the Royal Power, but alſo the *Engliſh* Religion and Government in that Nation.

And therefore I muſt freely tell you, that if even Rebels have put it out of their power to make Reparation for all the Wrongs they may have done by rebelling againſt their lawful Prince, becauſe he in poſſeſſion is too powerful to be driven out again without a violent Civil War, and a general Concuſſion of the whole Commonwealth; this Reparation to the injured Prince being not to be made, without a greater Evil than that they endeavoured to avoid, it ought to be omitted till it may be done with more Safety to the Nation, or elſe not at all: I ſay, if there be no other way to make Reparation to their injured King, but by engaging the Nation in freſh Civil Wars, they ought not to attempt it by ſuch unlawful and deſtructive means.

M. I confeſs the Diſcourſe you have now made carries the greateſt appearance of Truth of any thing you have yet ſaid; ſince it is drawn from the publick Good of the Nation, which I grant to be comprehended under the common Good of Mankind; and you have done well to own it to be Rebellion, to deprive a lawful Prince and his Heirs of the Crown: yet that it is unlawful to reſtore them again to it, if we think it cannot be brought about without a general Subverſion of our Religion and Civil Liberties, may be a Queſtion. I grant indeed, if we could be abſolutely certain of this, there would be ſome colour for this Argument; but ſince future things are not capable of Demonſtration, if the reſtoring our lawful Prince be a Duty incumbent upon every good Subject, we ought to endeavour it, tho with ſome Danger and Hazard of whatever is dear to us: for God will either protect us both in our Religion and Civil Liberties, for thus honeſtly performing our Duties (according as we are bound by our Allegiance) or if he has called us to ſuffer for the Truth, he will either find us Patience to bear it, or elſe provide us a way to eſcape. This I ſpeak in relation to the *French* and *Iriſh*, whoſe Conqueſt and Malice you are ſo much afraid of, in caſe the King ſhould happen to be reſtored by their Aſſiſtance: But indeed I think this a needleſs fear, ſince I ſuppoſe the King will be too wiſe to bring over ſo many of either Nation, as ſhall be able to make an entire Conqueſt of this Kingdom, leſt thereby both he and his Crown may lie wholly at their mercy when the Buſineſs is done. Nor do I think it either in the power of the *French* or *Iriſh* to perform theſe dangerous things: not of the former, becauſe (as I now ſaid) I ſuppoſe the King will never bring over more of them along with him, than what may ſerve to make a ſtand againſt the Prince of *Orange*'s Forces, till his good and loyal Subjects can come in and join with them to his Aſſiſtance; and as for the *Iriſh*, they are alſo the King's Subjects, and tho ignorant, they are very inveterate againſt the Proteſtant Religion, and the *Engliſh* Nation and Intereſt; yet they may be ſo governed and over-ruled by the King, as not to be able to do us any conſiderable Damage.

But as to the King of *France*, I do really believe he is far from intending to make an entire Conqueſt of this Kingdom for himſelf, much leſs deſirous to make the King as abſolute a Monarch here, as himſelf is in *France*: for as to the former, he has too much Conſideration of his own Glory and Reputation in the World to ſeize upon the Kingdom of a near Kinſman and Ally of his own Religion, and who had been driven from his Throne chiefly for being too much in his Intereſt: And beſides all this, he may very well fear, that if he went about any ſuch thing as an entire Conqueſt of this Nation, all Parties may join againſt him as a common Enemy, and drive him out again, as the *Engliſh* Barons did Prince *Lewis* in the time of King *Henry* III. Nor can it be the *French* King's Intereſt to make our King abſolute here; for then having the Perſons and Purſes of his Subjects wholly in his own power, King *Lewis* might juſtly fear, that either this King or his Succeſſors may prove as dangerous Enemies to the Crown of *France*, as ever they have been in former times, if ever our Kings ſhould go about to revive their antient Pretenſions to *France* or *Normandy*, or make war upon ſome other Quarrel: and therefore I think it will be more for the Intereſt of *France* to leave us our Laws, Liberties and Privileges, as we now enjoy them; nay, to make an expreſs Capitulation for them,

them, and when he has done, to foment those Jealousies and Disputes, that are still like to arise between the King and us about them, thereby to hinder us from joining against him; than by rendring the King Absolute to take them quite away, and put the sole Power of the Purse as well as of the Sword wholly into his hands.

To conclude, You do also very much misrepresent the matter in supposing, that tho the King cannot now be restor'd without falling into a new Civil War, it does therefore follow, that such a War is not to be desir'd for the publick Good of the Nation: since we shall thereby not only restore the Crown to its right Owner, and the Succession of it to the lawful Heir; but also shall restore Episcopacy in *Scotland*, and prevent the Church of *England* from falling into a dangerous Schism, by depriving the ABp of *Canterbury*, and as many other of the Bishops, who are so honest as not to take a new Oath, for standing out against it, by the Temporal Power of a pretended Parliament, without the Judgment of a lawful Convocation, who are the only proper and legal Judges.

You likewise as much mistake, in supposing that this War can no ways be finish'd, but by so great a Concussion as shall so much weaken the Kingdom, as to render it expos'd to the Invasions of foreign Enemies, in which you may be very much deceiv'd: for who can tell but the Hearts of this Nation may come to be so inclin'd to receive their lawful King, and his right Heir, and may be so weary of the present Usurpation, as upon his first appearance in *England*, with an Army sufficient to defend those who shall come into him, so many of his Subjects will take this advantage, as will be more than enough to restore him with as little Blood-shed, as when he was driven out? And then I think no indifferent Man but will acknowledge that such a War would prove for the best, since it will not only settle the Government upon its antient Foundation of a lineal Succession, but will also extinguish those fatal causes of War, not only from among our selves, but also from foreign Princes, as long as the King, and the Prince of *Wales*, and his lawful Heirs, shall continue in being; which I hope will be much longer than those upon whom your Convention has settled the Crown, either in Present or Reversion.

F. I doubt not but to shew you, that all you have now said, is either built upon false Principles, or else deduced by very uncertain Consequences; for in the first place, tho you doubt my Principle, That the People of this Nation are not bound to restore King *James* to the Throne, if it cannot be done without the evident Destruction both of our Religion and Civil Liberties, it certainly is true, (granting it to be ever so much our Duty to restore him, when with Safety we may.) For if the Obligation of all Moral Duties whatsoever, is only to be judg'd of according as they more or less conduce to the Happiness or Destruction of the common good of Mankind, (whereof this particular Nation makes a part) it will necessarily follow, that this Duty of restoring King *James*, is not to be practised, if it cannot be brought about without the Destruction of our Religion and Civil Liberties, since it is only for the maintenance of those, that even Kings themselves were first ordain'd in this Nation; and it is evident, that this Kingdom may be sufficiently happy, and subsist in the State it is now in, tho neither King *James* nor your Prince of *Wales* be ever restor'd to reign over us.

So that then all the difficulty that remains, is, That since his Restoration is not otherwise to be brought about than with the assistance of great Numbers of *French* or *Irish* Forces, whether it be not only so small a hazard as you make it, but twenty to one, that his coming in upon these Terms will produce those dreadful Effects, which I say will certainly happen from it? And tho I grant that future things, especially in the Revolutions of Government, are not so capable of Demonstration as Mathematical Propositions, yet if all the Circumstances of Time, and the Temper and Disposition of the King himself, and those who are to join with him in bringing him in again, be consider'd, it shall appear, that morally speaking nothing less than the evident Destruction of our Religion and Civil Liberties will follow; I think I may still positively affirm, that we are not oblig'd to restore him till this Temper of Mind be alter'd, and that he can be restor'd without these fatal Consequences I now mention. And if these Cautions are not observ'd, I deny that God hath any way promis'd to protect either our Religion or Civil Liberties, or that he is bound to provide us a way

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to eſcape, as you ſuppoſe; if to perform this ſuppos'd Duty of Allegiance thus unſeaſonably, we ſlight the only means God has ordain'd for our Preſervation. But as for the patience under thoſe Sufferings that may then happen, that is a very ſorry reaſon to embrace them; ſince God may give us that Grace, if he pleaſes, as the only Comfort we can have left us, when by our own Folly and miſtaken Notions of Duty, we have brought all thoſe Evils upon our ſelves.

I ſhall therefore now proceed to ſhow you, that theſe Evils I ſpeak of, muſt neceſſarily happen to us, in caſe King *James* be reſtor'd by the *French* or *Iriſh* Papiſts. In the firſt place therefore, it is very falſly ſuppos'd, that this Alteration can be brought about without an entire Subduing or Conqueſt, not only of their preſent Majeſties, but the whole Nation; as is apparent ſince none but the Papiſts and ſome few of the Clergy, Nobility and Gentry deſire his Reſtoration, and who if they were put all together, will not I believe amount to the hundredth Man, who would be either willing or capable to come in to his Aſſiſtance with Men or Mony: and therefore it is a vain Suppoſition to believe (as you do) that this new Revolution can be brought about without any more Difficulty or Bloodſhed than the laſt, as long as the preſent King and Queen continue to govern us according to the Declaration they ſubſcrib'd upon their acceptance of the Crown, and the Coronation-Oath they have ſince taken; which I hope they will always do, ſince nothing but following King *James*'s Example, as well as to Religion as Civil Liberties, can ever make this Nation willing to receive him, or your Prince of *Wales*, with ſo little difficulty as you are pleaſed to imagine.

Since therefore the buſineſs muſt be wholly done by force, I ſhall in the next place conſider all thoſe Suppoſitions you have laid down, as well in reſpect of the *French* as *Iriſh*, who are the only Hands that I ſee likely at preſent to do this Work. Firſt, as to what you ſay, that the King would be too wiſe then to bring over along with him ſo great numbers of the *French* and *Iriſh* Nations, as ſhall be able to make an entire Conqueſt of this Kingdom, leſt thereby both he and his Crown may lie wholly at their mercy, when the Buſineſs is done; you have hereby granted as much as I deſire. For if their Majeſties are never like to be without an Army in *England*, of at leaſt fifteen or twenty Thouſand Men as long as this War laſts, and the Militia of this Nation, which are almoſt totally againſt King *James*'s Intereſt, and do amount altogether to above a hundred thouſand Men; I think you your ſelf will grant that King *James* cannot attempt coming over hither with an Army of leſs than thirty or forty thouſand Veteran Soldiers of the *French* and *Iriſh* Nations, tho you ſhould reckon the Papiſts and others who ſhould come in to his Aſſiſtance at twenty thouſand more; who if they ſhould be all together able to beat not only King *William*'s ſtanding Army, but the Militia of the Kingdom to boot, I deſire to know what ſhall hinder them from making as perfect a Conqueſt of this Nation, as ever *Cromwell*'s Army did, either of *England* or *Scotland*, and conſequently of ſetting up what Religion or Government they pleaſe in this Kingdom; which, that it will not be what is now exercis'd either in Church or State, I think any unprejudic'd Man will eaſily grant me.

But your next Suppoſitions are altogether as precarious, That it is not either the Deſign, or Intereſt of the *French* King, to make an entire Conqueſt of this Kingdom for himſelf, nor yet to make King *James* an abſolute Monarch here. One of theſe I muſt needs believe will happen: for tho perhaps that King may at preſent ſtand ſo much upon his Glory, as not to ſeize the Kingdom of a Kinſman, and an Ally, wholly to his own uſe and benefit; yet it is moſt likely, that he will retain *French* Gariſons in all or moſt of the ſtrong places of *England*, not only for the ſecurity of the Charges he will have been at to place King *James* on the Throne, but alſo as a tye upon us that we ſhall never endeavour to drive him out again, let him uſe us as he pleaſes. So that tho I grant, he may not make an abſolute Conqueſt of us now, yet it may be in his or his Son's power to do it hereafter, if ever King *James*'s Son ſhall go about to ſhake off that Yoke, when once the preſent Obligation is forgot, or the near Relation between the two Kings ſhall be farther remov'd. Nor is what you ſay leſs precarious, that it will not be for King *Lewis*'s Intereſt to deſtroy our Liberties, and make King *James* an abſolute Monarch, becauſe the Kingdom will be then weaker and more

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divided than it is now, by those Jealousies and Disputes we shall then maintain with the King about our Civil Rights: which is indeed so far true, if he governs when he returns in the same arbitrary manner as he did before; but if he govern according to Law (which no wise Man can expect) there needs be no more Divisions among us than were for a great while after King *Charles* II's. coming in. But that the *French* King should fear, if he once made the King of *England* an absolute Monarch, and put the whole Power of the Purses as well as Swords of his Subjects in his hands, he might then become so formidable as to be an equal Match to *France* it self, and to be able to demand either the whole Kingdom, or any part of it, is yet more pleasant; since *France* is now, in comparison with *England*, not only in respect of Men, but also the Revenues belonging to the King, as ten to one: and I think I may very well maintain, that if *England* should once come to be govern'd as *France* is, it would be so far from growing richer, or more powerful thereby, that from the intestine Grievances and Discontents that such a violent course of Government would cause in the minds of the People, of all Sorts and Conditions, by those excessive Taxes and Oppressions that would follow from such an Arbitrary Government, the Kingdom would quickly diminish and decay, as well in People as Trade and Riches, and consequently in Power too: which is but the product of both these, notwithstanding whatsoever the fair appearance of an outwardly magnificent Court, and a great standing Army may produce, in the minds of those that do not truly consider or understand the true Grandeur and Safety of the Prince, and Happiness of the People.

But granting all this to be as you suppose, pray tell me what shall become of our Religion and Civil Liberties, not only in respect of the *French* King, but of King *James* himself? Can any one believe, that either of them will cease to be instigated by the Jesuits their Confessors to destroy the Northern Heresy (as they term our Religion) as well in *England*, as it has been in *France*? No, the poor *Vaudois* in *Savoy* have been too recent an Example, that the King of *France* would carry the Persecution to the same degree here, as he did there, and that King *James* being wholly in his power, will not be able to withstand his Commands, as well as the constant Sollicitation of his Confessors of the same Order and Principles as those of the *French* King, to which Holy Fathers the Protestant Religion in *France* and *Savoy* does chiefly owe its Destruction.

To conclude, let us suppose that King *James* shall prevail in this War by the help of the *Irish* Army, now rais'd by the Earl of *Tyrconnel*; can we expect better Quarter if the King prevails by their Arms and Assistance, than if they were intirely *French*? For having once conquer'd this Nation, it will not be in the King's power to govern them so easily as you expect; but being inveterate Enemies to the *English*, they will not only possess what Estates they please of the *English* Nobility and Gentry in *Ireland*, but in *England* too, which will be declar'd forfeited by their Owners opposing of King *James*: and then I will leave it to your self to judge in what a Condition we shall be both as to our Religion and Civil Liberties, when the King shall come to be manag'd by Men who are declar'd Enemies to both; neither will it be in the power of those few moderate Men, either of the Popish or Protestant Religion, who take King *James*'s part, to hinder it, since the other Party will by means of the Priests and Jesuits, and the Interest of *France*, run down all sober Counsels, and they will be look'd upon but as Trimmers (at best) that oppose it.

But as for King *James* himself, I desire to know of you what trust there can be put in him, or what assurance he can give us for the maintenance of our Religion and Civil Liberty, more than the renewing of those Promises, and that Oath which he has already broken? This being most likely to be the Consequence of things, if King *James* prevail, I shall leave it to your self, or any indifferent Person to judge, if what I have undertaken to prove, be not as clearly made out as future things are capable of, and sufficient to deter any Man that loves his Religion or Country, from joining in such pernicious Designs.

M. I confess you have made a long and tragical Narration of the dreadful Consequences that may follow, both upon our Religion and Civil Liberties, if the

the King prevail by the preſent aſſiſtance of the *French* or *Iriſh* Arms; and were I ſure of all this, I ſhould ſo far agree with you as to this point, as never to join with them for the King's return: and yet for all that I can never look upon my ſelf as freed from that Allegiance I owe the King, as well by being born his Subject, as from the Oath I have already taken to him and his Heirs, as long as they are in being; for I think I have already prov'd as well from Law as Reaſon, Firſt, That the Bond of Allegiance (whether ſworn, or not ſworn) is in the nature of it perpetual and indiſpenſable. Secondly, That it is ſo inſeparable from the relation of a Subject, that altho the exerciſe of it may be ſuſpended by reaſon of a prevailing Force, whilſt the Subject is under ſuch Force, *viz.* where it cannot be imagin'd how the endeavour of exerciſing it, can be effectually ſerviceable to reſtore the Sovereign Power to the right Owner, for the Eſtabliſhment of that publick Juſtice and Peace wherein the happineſs of Commonwealths conſiſts; yet no outward Force can ſo abſolutely take it away or remove it, but that ſtill it remaineth virtually in the Subject, and obligeth to a vigorous endeavour (whenever the Force that hindereth it is over) and to the actual exerciſe of it for the advantage of the Party, to whom of right it is due, and the advancement of the common Good thereby, upon all fit occaſions. Thirdly, That no Subject of *England*, that either hath by taking the Oaths of Supremacy or Allegiance acknowledg'd, or that not having taken either Oath, yet otherwiſe knoweth or believeth that the true Sovereign Power in *England* to whom natural Allegiance is due, is the King, his Heirs, and lawful Succeſſors; can without ſinning againſt his Conſcience, take any new Oath, or do any other Act whereby to transfer his Allegiance from the King or his Heirs, to any other Party who have no right to it, and thereby put himſelf into an incapacity of performing the Duties of his bounden Allegiance to his lawful Sovereign, when it may appear to be uſeful and ſerviceable to him. This is the expreſs Opinion of the Learned Biſhop *Sanderſon* in his Caſe of Conſcience concerning the lawfulneſs of taking the Engagement; which tho he did not think abſolutely unlawful, becauſe it might be interpreted in a dubious and qualified Senſe, without abjuring the King's lawful Right to the Crown; yet cannot this new Oath be taken in the like doubtful Senſe, becauſe (as I have already prov'd) the words in the Oath being to bear true Allegiance to King *William* and Queen *Mary*, would be indeed a transferring of our Allegiance from our lawful Prince to others, which is abſolutely unlawful.

F. I am ſomewhat pleas'd to ſee you are ſo far come off from your Bigotry, as not to think your ſelf bound to aſſiſt for the reſtoring King *James*, as long as it is no otherwiſe to be done but by the evident Deſtruction of our Religion and Civil Liberties; but yet you ſay you cannot take the Oath, becauſe it is Biſhop *Sanderſon*'s Opinion, as well as that of our beſt Lawyers, that Allegiance is perpetual, and untransferrable to another, whilſt the King or his Heirs are in being. Now let me tell you (ſpeaking as a Lawyer) it may be prov'd from this Statute, as well as from the conſtant practice before that time, that Allegiance was due to the King *de facto*, and that by the Judgment of all the Judges in the Reign of *Edward* IV. But to ſpeak of this matter, either as a Civilian, or a Divine, I think we are freed from the former Oath both by the Law of Nations, as well as the Law of God. For as for natural Allegiance, by which you ſuppoſe a Man is indiſpenſably ſubject to the King in whoſe Territories he is born, and that as long as he lives, I can by no means underſtand, that being born in a Country, makes one a Subject for all his Life to the Government of that Country; or why being, when born, in a Country, it ſhould make one become a Subject, more than being in the ſame Country at another time. Beſides, E. O. *p.* 49. common Experience ſhews this to be falſe, becauſe whoever is born in a Country, where his Parents are Foreigners, may (as it is allow'd by all) leave that Country when he pleaſeth: but perhaps it may be ſaid, he is a Subject to that Prince where his Parents were born; but what if they were born under the ſame Circumſtances? Or ſuppoſe his Parents are of different Countries, as if a *Dutch* Woman, and an *Engliſh* Man have a Child in *France*, ſince *France* does not pretend to him, which of the Nations can claim him for their Subject, or muſt he be divided? So that I can ſee nothing at all in this notion of natural Allegiance, that can oblige any body in Conſcience to obſerve it.

M. If then natural Allegiance ſignifies nothing, pray tell me is no body obliged to obey the King, or not to plot againſt him, until he has taken an Oath of Allegiance to the contrary? This would make mad work indeed, and upon theſe Principles no Man were bound to obey the King or his Laws, and not to conſpire againſt his Perſon or Government, until he had taken the Oath of Allegiance; ſo that three parts of four of the Kingdom would be abſolutely free from this great Duty.

F. No, Sir, you are very much miſtaken, ſince I think I can found Allegiance to the King and Government upon a much firmer Foundation than that of being born his Subject; that I am ſo far from ſuppoſing that our Obligation commences from our taking the Oath of Allegiance, that tho I think it may ſerve to inforce our former Obligation to our King and Country, yet does it not ſuperinduce any new Obligation thereunto: for indeed our Obligation to any particular Government may be made out from much ſurer Principles, *viz.* That every Perſon, tho he be born free, yet is he, for the ſake of his own Safety, obliged to part with his Liberty, and put himſelf under the Protection of ſome Government; nor can he be ſecure in what he enjoys but by it, nor can he have a Right in a Country (that is already poſſeſſed) to Property, but by owning the Government of that Country: and when by enjoying the Rights and Privileges of the Subjects of that Commonwealth, he has owned himſelf a Member of it, and a Subject to its Government, he is then bound to maintain this Government, and alſo the King that adminiſters it, from a double Obligation: the one particular in reſpect of himſelf, and that Protection he receives from him; the other more univerſal, proceeding from that Duty, which is incumbent upon every particular Subject to maintain the Peace and Happineſs of the Commonwealth, as long as he continues a Member thereof. So that he is bound never to diſturb it, as long as the main ends of Government can be had and enjoyed therein; and this is the only means that I know of, by which any Man (except by expreſs Oaths and Promiſes) can conſent to become ſubject to any ſingle Perſon or Government. Now this tacit Conſent of particular Perſons being ſeparately and ſingly given, unthinking People take no notice of it, and ſuppoſe they are as naturally Subjects as Men, and conſequently that they have no more Right to free themſelves from their Subjection, than from their human Nature; nay, muſt ſuffer themſelves to be deſtroyed rather than endeavour it, let the Government oppreſs them ever ſo unmercifully: which is indeed to reduce Men to the Condition of brute Beaſts, who belong to this or that Owner, becauſe he either bought them with his Mony, or elſe becauſe they happened to drop from their Dams upon his Ground.

Ibid. *p.* 49.

From what has been here ſpoken, I think we may deduce this general Concluſion, That every ordinary Subject, who enjoys the common Benefits and Protection of any Government, is bound in Gratitude not only to obey it, but alſo to be true and faithful to it during the time he lives under it, and is bound likewiſe not to conſpire againſt it: and therefore that Oaths do not alter the nature of Allegiance, or make it due where it was not before, or any ways extend it, but only add a new Tie to pay that Allegiance which is due upon the account of Protection. He that lives under a Government, tho he has not ſworn to it, owes it the ſame Allegiance as he that has; and if he ſhould deny his Allegiance to it, would be equally guilty of Treaſon, tho not of Perjury. It is evident by the univerſal Practice of Mankind, that no Subjects ever thought themſelves obliged by thoſe Oaths of Fidelity (which all Governments have conſtantly impoſed on them) when they could not be protected by them, and that this failure of Protection did not proceed from any fault in the whole Nation, or People themſelves. And this may be proved by the common and conſtant Practice of all the Subjects of *Europe*; for who does not know that the Subjects of the King of *France*'s laſt Conqueſts in *Flanders*, have been forced to ſwear Allegiance to him, tho they were ſatisfied that his Title was unjuſt, and that their natural Sovereign the King of *Spain*, to whom they had formerly ſworn Allegiance, is ſtill living? We have had alſo a late Example of the Subjects of the Duke of *Holſtein-Gottorp*, who having both his Perſon taken Priſoner, and his Territories unjuſtly ſeized upon by the King of *Denmark*, in time of Peace, the Subjects of the ſaid Duke were forced to ſwear Allegiance to the King, notwithſtanding their former Oath to their Maſter;

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nor do our modern Caſuiſts, as I know of, blame them for ſo doing. And why the People of *England* ſhould be tied to harder Terms than all the reſt of *Europe*, I wiſh you could give me a ſufficient Reaſon; ſince the Legiſlative Power of *England* (wherein it is certain the People have a ſhare) are preſumed to recede as little as poſſible from natural Equity, and therefore deſign, by impoſing ſuch Oaths, only the Good and Preſervation of the Civil Society, whoſe Intereſt it is, that they who have the publick Adminiſtration of Affairs ſhould not be diſturbed: but it is not at all material to that end, whether this or that Man hath this Power, provided it be well managed; nor can it, without the greateſt Abſurdity, be ſuppoſed, that ſuch numbers of Men as Societies are compoſed of, who are by Nature equal, ſhould oblige themſelves, by the moſt ſolemn Ties, to become moſt miſerable by living without Protection; nay to loſe even their Lives, rather than own the Government that can and does protect them, for no other reaſon but ſuch an extraordinary fondneſs to this or that Perſon, or Family, as to fancy the Government to be inſeparable from him, not the Neceſſaries or real Conveniencies of Life, but only an Office (for Government is no other) which is but an imaginary Happineſs. I grant therefore, that People ſhould be true to thoſe that have the preſent Adminiſtration of Civil Affairs, is all that Oaths of Fidelity require; and it is evident from the intent of it, that the late Oath of Allegiance required no more, and to extend it farther than the King in being, is not reconcilable with the Reaſon, End, and Deſign of paying Obedience, which is the Peace and Happineſs of the Civil Society; which can never be maintained, if People may, for the ſake of a ſingle Perſon, diſturb him that has the Adminiſtration of their common Affairs; and it would require Impoſſibilities, becauſe private Perſons are incapable of paying Allegiance to a King, when out of poſſeſſion of the Government. Ibid. *p.* 55.

M. Notwithſtanding what you have ſaid, I think I am able to convince you of divers great Miſtakes you have now committed in this Diſcourſe of natural Allegiance, as alſo in the Obligation we are under by the Oath of Allegiance to King *James*. For firſt, as to natural Allegiance, you are very bold to ſuppoſe there is no ſuch thing, when all your Law-Books hold ſo expreſly that there is; I am ſure this is to be guilty of the Fault for which you have already reproved me, of being wiſer than the Laws. You are alſo much miſtaken to ſuppoſe, that this natural Allegiance merely ſprings from hence, that the Perſons obliged by it are only ſuch as are born within the King's Dominions; for Perſons born without the Realm may be alſo his natural Subjects, as are the Children of Embaſſadors born beyond Sea, and the Children of Aliens born within the Kingdom, which are not therefore natural Subjects of the King: So that the mere Circumſtance of Birth does not alone entitle any one to the Privileges of a natural Subject, nor conſequently bind him to all the Duties of natural Allegiance. But it is therefore called natural in our Laws, becauſe, as the beſt Lawyers have affirmed, it is founded upon the Law of Nature, which gives a Sovereign Power a Right to the Allegiance of every one who is born under the Juriſdiction of it. As every Son is born a Subject to his Parents, and is by the Law of Nature obliged to honour, obey, aſſiſt, and ſupport; ſo alſo is he born a Member of the Body Politick, and by conſequence a Subject to the Sovereign of it; and accordingly, by the ſame eternal Law, is bound to pay all faithful Service and Obedience to him, when he is in a capacity to perform them. D. A. *p.* 15.

But your next Miſtake is yet worſe, when you confound that common Obligation of a Foreigner or mere Denizen to be true and faithful to the Commonwealth wherein he lives, with this natural Allegiance of every *Engliſh* Subject: for tho I grant the taking the Oath of Allegiance does not inforce any new Obligation upon him that takes it, more than he was ſubject to before; yet for all that, I think you will not deny, but that there is a great deal of difference between that common Obedience or Submiſſion which ſuch a Foreigner pays to the King and his Laws in a Country where he ſojourns, and that more perfect Allegiance ariſing either by Birth, or from ſuch a Stranger's being naturalized, and by taking the Oath of Allegiance, becoming as true and perfect a Subject as a natural *Engliſhman*. And hence it is, that in all Wars declared between neighbouring Princes, whatever Subjects of theirs ſhall

presume to stay and reside in each other's Dominions, after once they are recalled home, may be justly executed as Traitors whenever they shall be taken. And therefore tho I grant that every Person now living in *England*, and of ripe Age, is obliged to obey your King and Queen *de facto*, in all ordinary and lawful things, which tend to the publick Benefit and Defence of the Civil Society or Commonweal, and which being for the Benefit of the King *de jure*, and his Liege People, it is to be morally supposed they have his tacit Consent for what they do, as long as it tends only to this end: yet does it not therefore follow, that the bare Protection of this usurped Government, and the Enjoyment of the common Privileges of a Subject, should give such a King *de facto*, or Government, a Right of exacting an Oath of Allegiance to them; since I have already proved, from the true signification of being true and faithful, as also from the legal signification of the word Allegiance, that no true Subject can lawfully take it, without renouncing his Allegiance to his natural Prince: seeing not only a bare Neutrality or Obedience in not transgressing the Laws is thereby required of them, but also an active Obedience and Duty in performing the King *de facto*'s Commands, and the defending him, whenever there is occasion, in his ill-gotten Power.

But the only Difficulty being, how a strict Observation of this Oath can consist with the Quiet and Happiness of the Subjects, whenever a new Oath of Allegiance comes to be imposed by the King *de facto*, since the Subjects may be all ruined that do not take it, if it be once offered to them; this Difficulty might be easily removed, if the whole Nation would stick firmly to the Duty required by their former Oath of Allegiance, and resolve never to take a new one: for then the Numbers of the Refusers would be so great, as that they would be more than could be made to suffer for their refusing it. I speak of such Subjects as are in our Case, and who are not forced by a Prince, who either has the Right or Power of a Conqueror, to compel them by force; and therefore your Instances of the Subjects of the King of *Spain*, or of the Duke of *Holstein*, who were conquered, or else as good as conquered by the Power of *France* and *Denmark*, signify nothing: whereas we are only overawed by an inconsiderable number of *Dutch* and *Germans*, and might set our selves free, if we would give but a vigorous Effort towards it. For that K. *William* is a Conqueror over the whole Nation, I think you dare not affirm; and unless he were so, he could challenge no Right to our Allegiance as such: and therefore I must still believe, that the Oath of Allegiance I have taken to King *James* and his Heirs is perpetual, unless you could show me that their Right is determined, which you have not done by any thing you have yet said. I cannot therefore be of your Opinion, that the bare Protection of an usurped Power can justify our swearing Allegiance to it, either in Law or Conscience; for then all Men had been obliged to pay as firm an Allegiance to the *Rump Parliament*, and also to *Oliver Cromwel*, as to King *William* and Queen *Mary*; since both the former protected the People as much in their Religion, Civil Liberties, and Properties, as the latter I fear will ever do.

And that the bare Protection of a Government does not give it an absolute Right to the Allegiance of all those that enjoy their Protection, I think may be sufficiently proved from the Instance of a *Frenchman*, or any other Foreigner; who tho by his living here, and enjoying the common Protection of the Government, I grant he is obliged to be obedient to its Laws, and is not to act or conspire against it; yet this does not discharge him from his natural Allegiance which he still owes to his former Prince, so as to do any thing which may prejudice that Allegiance he owes to him, either by conspiring or fighting against him. And this was solemnly declared to be Law by the Judges of the *King's-Bench*, in the case of Dr. *Story*, in the 13th year of Queen *Elizabeth*: He being a violent Papist, fled over into *Flanders* to the Duke of *Alva*, and there conspiring with him to invade this Kingdom, and being afterwards taken and brought over Prisoner, was tried as a Subject of *England*, tho he refused to plead as such, because he said he had sworn Allegiance to the King of *Spain*; notwithstanding which Plea he was executed as a Traitor, as you will find at large in my Lord Chief Justice *Dyer*'s Reports: which Judgment is also confirmed by the Lord Chief Justice *Coke* in *Calvin*'s Case, where he expressly asserts, "That a Person born under the Dominion of the King of *England*, owes "him

13 Eliz. f. 303. B. l. 2.

" him perpetual Faith and Allegiance, and this by virtue of the Law of Na-
" ture, becauſe *Jura naturalia ſunt immutabilia.*" From whence will alſo appear the Falſity of your Concluſion, that Oaths of Allegiance extend no further than to the King in poſſeſſion, or to that Government to which we do at preſent owe our common Protection, and therefore that our Law has a much higher Conſideration of this inherent Allegiance that belongs to a King *de jure* as to his particular Perſon, and his Heirs: So that it cannot be indifferently paid to any body elſe, who can, by ſeizing of the Government, force us to owe our Protection to them; which appears by what my Lord *Coke* hath alſo laid down, to have been agreed by all the Judges upon this Oath of Allegiance in *Calvin*'s Caſe, as I cited it to you at the beginning of this Evening's Converſation. So that I confeſs I much wonder, conſidering what he has there ſaid, how he can ſo poſitively maintain as he doth (in the place you have alſo quoted) that Allegiance is due to the King *de facto*, and not to him *de jure*, whilſt the former is poſſeſſed of the Crown: ſince it ſeems a flat Contradiction to me, how a Subject is to pay Allegiance, as long as he lives, to the King and his Heirs, of Life and Member; that is, until the letting out of the laſt Drop of our deareſt Heart's Blood, and that in all places whatſoever; and yet that this Obligation ſhould laſt no longer, than whilſt the King *de jure* is in actual poſſeſſion of the Throne. And therefore I think I have very good reaſon to maintain, that we are ſtill obliged by our former Oath of Allegiance to King *James*, ſo as not to take a new one to any other King, unleſs we had been conſtrained to it by an abſolute Conqueſt, which you your ſelf will not maintain to be our preſent Caſe.

F. I confeſs you have now argued this Point very ſtiffly, and I think what you have ſaid carries with it the greateſt appearance both of Law and Reaſon of any thing you have yet urged upon this Subject; and therefore if I can fairly anſwer it, I hope you will come over to my Opinion, and take the Oath which is now required of you. In the firſt place therefore, I cannot deny, that all you have ſaid concerning a natural Allegiance due by Birth to the King, is true according to our Laws; and I do my ſelf allow the thing, *viz.* That Allegiance is due to him, tho not for the Reaſons upon which our Lawyers have founded it, but upon thoſe I have already given. And therefore granting it was held to be Law in the Caſe of Dr. *Story*, that his Plea of becoming a Subject to the King of *Spain* was over-ruled by the Judges, and he refuſing to make any other Plea, was condemned upon a *nihil dicit*; yet this being only a penal Law, I think obliges the Subject to the Penalty if he be taken, but does not oblige him in Conſcience never to change his Prince or the Government he was born under without their Conſent, let his Circumſtances become ever ſo uneaſy under it. And that this is ſo, I need go no further than the late Caſe of the *French* Refugees, who though they are ſtrictly commanded by their King not to ſtir out of *France*, whatſoever Perſecution they may ſuffer; yet I think no Man of Senſe can blame them, if, being perſecuted there, they remove themſelves into other Countries, and become perfectly naturalized Subjects or Denizens, at leaſt in that Government whereunto they remove. And this is ſo known a thing, that no Caſuiſt, as I know of, thinks it a Sin in ſuch Subjects of *England*, as finding it for their advantage, go over into another Country, to ſettle and make their Fortunes, and are there naturalized, or made free Denizens in thoſe Kingdoms or Commonwealths whereunto they remove; nor are ſuch Perſons obliged in Conſcience to return home upon the Command or Summons of that Prince, to whom you ſuppoſe them to be Subjects by Birth. Nor is your Argument at all convincing, becauſe a Man owes a Duty to his Parents by the Law of Nature, and by being born their Child, that therefore the Subjection to the Prince, under whoſe Government he is born, muſt be alike perpetual, ſince the ground upon which you found this Conſequence is altogether falſe; for I have already proved, at the firſt Meeting we had to diſcourſe of theſe Matters, that a Man's being begotten, and bred up by his Parents, does not make him become their Subject or Servant in the State of Nature as long as he lives, ſo that he may never withdraw himſelf from their Subjection without their leave.

But in the next place, I think I am as little miſtaken in my Notion of Allegiance, which I ſuppoſe every Perſon, who is a true and perfect Subject of the

the Government, owes to the King or Sovereign Power thereof: for tho I grant there is a great deal of Difference between that imperfect Allegiance, or bare Submiſſion, which every Foreigner owes the King or Government under which he reſides, and that more perfect Allegiance which every Subject owes the King, who enjoys all the Rights and Privileges of a true *Engliſhman*; yet to let you ſee that this Diſtinction proceeds not from the bare Protection of his Perſon and Goods by the Government under which he lives, but by his being naturalized, and becoming thereby a perfect Member of this Civil Society, it is plain from your own ſhowing: and therefore whoſoever not only enjoys the common Protection of an Inhabitant, but alſo all the Rights and Privileges of a true *Engliſh* Subject, is bound to ſwear Allegiance, if required, to the King or Queen *de facto*, without enquiring into their Right or Title: For if they are Strangers, or have never taken any Oath of Allegiance before, they cannot be under any former Oath. And as for natural Allegiance, I have already proved it to be a mere legal Notion, and this Allegiance I have alſo proved to be due to the King and Queen *de facto*, not only from the Opinion of the Judges in *Bagot*'s Caſe, but alſo from my Lord *Coke*'s Interpretation of the Statute of Treaſon; which tho you ſuppoſe to be contradictory to what he had before laid down in *Calvin*'s Caſe, yet if you pleaſe better to conſider of it, you will find it not to be ſo: for tho it is true the Judges do there aſſert, "That the Obligation of the Oath of Allegiance is in-"definite and without Limitation, as being made to the King and his right "Heirs; and alſo that it extends to the venturing of Life and Members, and "to the letting out of the laſt Drop of our Blood:" yet is this ſtill to be underſtood only of ſuch a one and his Heirs, who ſtill continues to be King in a legal Senſe, which can be only he who is King for the time being, as he is ſtiled in this Statute of the 11th of *Henry* VII. and only during the time that he continues in actual poſſeſſion of the Throne. And therefore the word *King* or *Majeſty* being indefinite, and without having any reſpect to his Title, whether by Deſcent of Blood, or elſe by his being crowned and recognized by Parliament, it is no Contradiction to ſuppoſe this Allegiance is only due to the King in this limited ſenſe, according to the Statute of *Henry* VII. Where pray take notice, that I have made this Allegiance to be only due to Kings and Queens *de facto*, becauſe they only are within the Intent and Letter of this Statute, as alſo of that of Treaſon, according to the legal Government of this Nation by the fundamental Laws thereof, and can no ways be extended to any other Powers under other Titles, ſuch as the Rump Parliament under the Title of a Commonwealth, or *Oliver Cromwel* under that of a Protector; who tho they took upon them to protect the People after a ſort in their Lives and Eſtates, yet ſince it was not according to the true Rights and Privileges of the Subjects of this Nation, which they highly violated, and in ſome points quite deſtroyed; and that they alſo took upon them this Protection without the free Conſent of the lawful Repreſentatives of the Nation aſſembled in a full and lawful Parliament; I can by no means allow them to have given the People ſuch a true and legal Protection as the Law requires to conſtitute a true and perfect Allegiance, or can make them to be the ſupreme Power of the Nation, and within the Statute of the 25th of *Edward* III. So that this Statute, and that of the 11th of *Henry* VII. muſt be our Rules in this Caſe.

But I cannot but ſmile at the Expedient you have found out to hinder the People of this Nation from being ruined, if they do not take the Oath of Allegiance to their Majeſties, which is by a general and abſolute Refuſal of it; and this you ſuppoſe, if unanimouſly agreed on, would hinder them from ſuffering any thing by this their Refuſal. And you think they are alſo ſtrong enough to oppoſe it, becauſe the King has only a ſmall Army of Foreigners, which he ſtill maintains here; and this you think may lawfully be done, becauſe their Majeſties do not claim by Conqueſt, but by the Election of the Convention, and therefore that this Caſe does not come up to that of the Subjects of *Flanders* and *Holſtein*: in which Argument I doubt not but to ſhew, that every one of your Suppoſitions are falſe. For tho the Nation is not conquered, yet it is certain that all private Subjects are under as great a Reſtraint by this legal change of the Government, as if they were in the power of a Conqueror: for to reſiſt would be equally fatal to them in both Caſes, and there is

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no visible Power nor Authority that can defend them against the present Power, in case they should go about to refuse this Oath when it is offered to them. And therefore tho I grant the King's standing Army of Foreigners is but small, in comparison of the whole Nation, since he does not intend to keep us in subjection by force, but only to hinder any sudden Insurrection of those of your Party; yet besides all this, God be thanked, their Majesties have the main Body of the common People of the Nation on their side, who are sufficiently able to destroy all those that shall go about to make those vigorous Efforts you so much desire. So that you have nothing else to plead, but that which I hope never to see, that we are not under a Force, because we still entirely enjoy our Religion, Liberties, and Properties. And tho the King, out of his great Goodness and Modesty, did not think fit to insist upon his Title by Conquest over King *James* and his Adherents; yet I think I have already proved at our last Meeting, that he may as justly claim by Conquest, as his Namesake *William* I. since he came not over to conquer the Nation, but to vindicate his former Right; and after his Conquest of King *Harold*, could have no just Title to the Crown, till he had been solemnly elected and recognized for King, according to the Laws and Customs used at that time. And why the Nation might not do the same thing now for their Deliverer from King *James*'s arbitrary Power, I should be glad if you could give me a sufficient Reason. But if the whole Nation should have been as peevish and discontented as those of your Principles, and should not look upon the King as their lawful Sovereign, because he does not claim by Conquest, it would be altogether as grateful and reasonable, as if a Woman having, by the assistance of an honest Gentleman, been rescued from being ravished, and he afterwards falling in love with her himself, should court her to marry her; she should refuse him, because he had not ravished her when he might, or at least have forced her to marry him whether she would or no: apply this Comparison to the Case in dispute, and see if it does not hold. And therefore I must still maintain that the parallel Cases of the Subjects of *Flanders* and *Holstein* are good as to those of your Opinion, who have no notion how Allegiance can be transferred, unless by perfect Force and Conquest; since if you please to desire it, I'll undertake the Government shall seize upon your Estates, and imprison your Persons, till you do take the Oaths, as the Kings of *France* and *Denmark* did those who refused to swear Allegiance to them.

M. I have heard you a great while upon this Subject, and I wish I could say I were fully satisfied with your Reasons; however, since it grows late, I will not dispute this Point any farther, but will take time to consider what you have now urged: only I must needs tell you thus much, I could wish that Princes could find some other way of securing themselves of their Subjects Fidelity, besides this Test of an Oath of Allegiance, which serves as a Snare to many pious and conscientious Men; whereas those of none, or at least of very loose Principles, will swallow any Oath that can be imposed upon them. And I am sorry to see so many of those, who I know are in their Hearts of my Principles, prevailed upon to take it, not out of Conscience, but mere worldly Interest and Advantage, and whom I am satisfied will never serve this Government the more heartily or sincerely for having taken it. And therefore to tell you the truth, I begin very much to incline to *Grotius*'s Opinion, that promissory Oaths are absolutely unlawful: yet considering the several Changes and Turns of Government which we have seen in *England* for above forty years last past, I am so far for the Good and Happiness of my Country, as to think every true *Englishman* obliged so far to obey the Powers in being, as may tend to the common Good and Defence of the Nation, by the Administration of Justice between Man and Man, and in the Punishment of Offenders, and for Defence of the Nation against foreign Enemies. But sure, methinks, this might very well be done without the imposing any Oath at all, either upon Magistrates or Officers, and much less upon ordinary Subjects; since if they are persuaded in their Consciences that it is lawful to act under this present Government, let them do it if they will: but as for the common People, I confess they are so stupid, that they have seldom any other measures of the Justice or Lawfulness of any Government or Prince's Title, than the Ease or Advantage they find by it. And therefore upon the whole matter,

matter, I think it were much better for the Government, in the unſettled State it is in, to follow *Cromwel*'s Example, and to impoſe no Oaths of Allegiance at all, ſince the Government may be as ſecure without it, as (for all that I can ſee) they can be with it; and as it is now managed, I ſee little it can ſerve for, but to diſtinguiſh and divide us one from another. And beſides its being a Snare to the Conſciences of ſo many that take it, it is like alſo to prove the Ruin of divers of our Biſhops and other honeſt Men, both of the Clergy and Laity, who will certainly rather loſe their Dignities and Imployments than ever take it; which will alſo cauſe a great Schiſm in the Church, as I doubt you will find when it is too late: whereas if theſe Men might have held their Biſhopricks, and all other Preferments and Offices, without having this Oath impoſed upon them, I doubt not but they would ſerve both the Church and State in their ſeveral Stations, according to their Duties, and as far as lawfully they could.

F. I cannot deny but you have ſpoken very honeſtly, and like a good *Engliſhman* in many things you have now ſaid, in caſe your Intentions towards the preſent Government were real, as your words are fair; and therefore I cannot wonder that you who have been formerly a ſtiff Aſſerter of the Lawfulneſs and Neceſſity of the Oath of Allegiance, ſhould now be for taking it quite away, ſince it grows too hard for your ſelf, and thoſe of your Opinion to digeſt: as if to oblige Subjects to defend their Governors, were a neceſſary Security for your rightful Princes, but were unneceſſary for thoſe whom you ſhall think fit to ſuppoſe to be Uſurpers. And tho I confeſs I muſt very much pity the overnice Principles of thoſe of your way, who are truly peaceable and conſcientious, and are like to be ruined by their Refuſal of it; yet for all that, I very much doubt whether it would be for the beſt to take this Oath quite away, ſince it would make a ſtrange Alteration in the Government to admit all Perſons into ordinary Charges, much leſs into Imployments of Truſt and Profit, without taking any Oath at all. Your only Objections againſt it are theſe: (1.) That you doubt that it is unlawful to impoſe promiſſory Oaths; and the next is, that it will not perform the end for which it is intended, *viz.* to diſtinguiſh thoſe who will ſerve the Government faithfully, and thoſe that will not; ſince you confeſs that a great many, who are not at all ſatisfied in their Conſciences, will, for Intereſt, not only hold their old Imployments, but will alſo take new ones under it, which I grant is not to be avoided, if Men will venture to be damned. So likewiſe on the other ſide, I muſt tell you, that the quite taking away the Oath of Allegiance will not at all mend the matter, but make it much worſe; ſince then, not only thoſe whoſe Conſciences will give them leave to take the Oaths, but alſo thoſe who think they ought not to take them, will be alike capable of Imployments: and when they are in them, tho I grant they may be both alike free to act as they pleaſe againſt the preſent Government, and for reſtoring of King *James*, yet I muſt needs tell you for all that, that I am much more fearful of the Ill-will or Malice of thoſe who think themſelves obliged in Conſcience to overthrow the preſent Settlement, and who continue ſtiff to their firſt Principles, than of thoſe who will ſo far comply with this preſent Government and their own Intereſt, as to take the new Oath of Allegiance in whatever ſenſe they pleaſe. For I am very well ſatisfied that ſuch Men, tho they are not ſo right for the Government as I could wiſh them, yet either Fear of Puniſhment, or elſe the Conſideration of their own Self-intereſt, will always make them deſire to retain thoſe Imployments they have already got, ſince they can never be aſſured of bettering their Condition under King *James* and a Popiſh Government, ſhould he ever return; whereas thoſe that are bigotted to Principles, will always think it their Duty, by virtue of this Notion of a natural Allegiance, as well as their former Oath, to endeavour to reſtore him by all the ways and means that can ever lie in their power. But as for the Unlawfulneſs of a promiſſory Oath, ſince you your ſelf ſpeak doubtfully of it, and few Caſuiſts, except *Grotius*, have been of that Opinion; I think it is not ſafe to quit our antient Laws, which particularly preſcribe, that not only all Magiſtrates and Officers, but alſo all other of the King's Subjects, ſhould take the old Oath of Fidelity or Allegiance (as we now ſtile it) in the Court-Leet, or Sheriffs Torne, when they come to the Age of fourteen years:

which

which Oath (as appears by what we can find of it in *Edward* the Confeſſor's, and King *William*'s Laws, which we have already recited; as alſo you may find it in Sir *H. Spelman*'s Gloſſary, *Tit. Fidelitas*) was made to the King, as their Liege Lord, of Life and Limb, and which implies an active Obedience to defend him againſt all his Enemies, without any exception of ſuch as may claim by Inheritance, or Right of Blood.

Now this being ſo, I cannot be perſuaded that the Government ought to quit any lawful means whereby it may preſerve it ſelf, and diſtinguiſh thoſe who would really ſerve it from thoſe who will not: and tho perhaps the Government may find it ſelf miſtaken in its account in ſome Men, whoſe Conſciences are large enough to ſwallow any Oath whatſoever; yet I think I may ſtill ſafely maintain, that it is in leſs danger from a few ſuch Libertines, than from thoſe of your Opinion, who would not only keep their Places under this Government, but will alſo continue in a perfect State of War againſt it, let them be treated ever ſo kindly. And therefore with reſpect to thoſe dreadful Conſequences of Schiſms in the Church, and the leſſening and dividing our Party; as to the former, we muſt run the hazard of it, ſince it was never heard of that the Biſhops, who are in ſome reſpects temporal Barons, held their Biſhopricks under any King ſince the Conqueſt, without owning his Authority; and I can alſo ſhew you, that the King and Parliament have either actually deprived, or elſe declared ſuch Biſhops Traitors to the Government. So that if any ſuch Schiſm be made, it will proceed from a Scandal unjuſtly taken by ſome ſcrupulous Men, and not by the Government. And as for the other Inconvenience, I think it is much ſafer for the Government to imploy fewer Men, than by not knowing who are Friends or Foes, to truſt all promiſcuouſly; tho perhaps, notwithſtanding their utmoſt care, ſome Men of little or no Conſciences will have Places in this as well as they have had formerly: which can by no other means be prevented, as I know of, but by chuſing Men of honeſt Principles, and ſober Morals, and of a quite different Intereſt to thoſe imployed in the two laſt Reigns. And therefore I am ſo far from taking away the preſent Oath of Allegiance, that I rather wiſh that there were a new one more ſtrict and full than the preſent, ordained to be taken by all thoſe who ſhall take Offices, and Employments of Truſt or Profit, whereby they ſhould not only declare their preſent Majeſties to be true and lawful King and Queen of this Realm, but alſo that they will defend them againſt all their Enemies, King *James* himſelf not excepted.

M. I confeſs I cannot expect ſo great a Tenderneſs from this Government, which has been introduced by ſo much Artifice, that they ſhould abſolutely take away all Oaths of Allegiance whatſoever, ſince I doubt not but it will aſſume to it ſelf all thoſe Advantages which any former uſurped Power could pretend to; yet this much I muſt needs tell you as a Friend, the depriving thoſe Biſhops and dignified Clergymen who ſhall refuſe this new Oath, will be highly ungrateful, ſince many of them have been as violent Oppoſers of Popery and arbitrary Government as any Men in *England*, as appears by their late Petition to the King. If therefore the Archbiſhop of *Canterbury*, and thoſe other Biſhops I know to be ſo averſe to this Oath, ſhould be deprived upon the refuſal of it, ſince it will be done uncanonically, by the temporal Power of an Act of this Convention, without the Sentence of the two Houſes of Convocation, I doubt that it will be thought by many to be a ſufficient Cauſe of departing from the preſent Church-Communion, and of ſetting up diſtinct Congregations by thoſe who will be deprived, and turned out of their Livings for refuſing this Oath; and what the Conſequence of that may prove, God knows.

But whereas you think this preſent new Oath not full enough, and therefore wiſh there were another made, declaring the preſent King and Queen to be lawfully and rightfully ſo, *&c.* ſince this would amount to as good as an Oath of Abjuration of King *James* and his Title, I doubt it were better let alone; for I do not think the preſent Government will get any thing by it, ſince the intent of the Oath you propoſe can only ſerve either to gain the preſent Government more new Friends, or elſe to fix the old ones faſter to it, or elſe to diſcover ſecret Enemies. And if I can prove it will not ſerve for any of theſe three ends, I ſuppoſe you will grant that it were better to let it alone.

Now that it will be ſo far from gaining it more Friends, that it will rather ſerve to drive away a great many from it, is apparent; ſince many Men are now in Offices and Employments, who think they may lawfully take this new Oath of Allegiance, as long as the preſent King and Queen are not therein declared to be lawfully and rightfully ſo, and I believe may ſerve them faithfully enough in their ſeveral Stations; who if they ſhould come to be put to it, to declare and ſwear that they were rightful and lawful King and Queen, would rather loſe their places than take it. Neither will it fix thoſe that are for this Government faſter to it, ſince thoſe that are zealous for it, will be ſo whether they took any Oath or not. And I have already proved, that by the word Allegiance in this Oath, it is implied, that the preſent King and Queen are to be defended as lawfully ſo by the Swearer to it; which is the main reaſon that I, and thoſe of my Opinion, can by no means think it lawful to take it. Nor laſtly, will it diſcover any ſecret Enemies to your Government, ſince thoſe, who being rightly inſtructed in the true ſenſe of this Oath, and what is thereby required, ſhall notwithſtanding take it againſt their Conſcience, will I doubt take any Oath whatever the Convention ſhall think fit to impoſe; and nothing but the fear of loſing their preſent Employments, or elſe the deſire of getting new ones, could have made them take the Oath as it is, and to my knowledge it hath been taken by many now in Places much againſt their own Judgment, and I doubt the Conviction of their Conſciences too.

I ſpeak this only in relation to ſome of looſe Principles: but as to my ſelf, and many more of my Acquaintance who refuſe this Oath, we ſhould be ſo far from taking any place of Truſt under this Government, that we ſhould not do it, tho no Oath were at all required of us; ſince I think it not only wicked and diſhonourable for any honeſt Man to ſerve a Party, only to watch an opportunity to betray it: but I alſo believe my ſelf obliged by my former Oaths, as well as the Duty of a natural Allegiance which I owe the King and his right Heirs, not to ſerve thoſe whom we look upon as Uſurpers of their juſt Rights.

But if you would alſo have this new Oath to be an abſolute Abjuration of the King and his Title, it will not only be unjuſt, but impoſſible; ſince who can tell but either by the Help of a foreign Force, or the general Conſent of the Nation, tired out by a long expenſive War, either his Majeſty or the Prince of *Wales* may be again placed upon the Throne? and then ſure, whenever they ſhall call a Parliament to recognize his Title, they will be, even according to your own Hypotheſis, more lawful and rightful Kings than King *William* and Queen *Mary*, ſince they will not be only Kings *de facto*, but *de jure* too. And therefore I believe it was out of this Conſideration, that in all thoſe long and various Conteſts which ſo often happen'd between Competitors for the Crown, they never preſumed to propoſe to the Parliament the paſſing any Act to impoſe an Oath to abjure the Title or Perſon of the rival Prince. Thus it was in all the long Wars between King *Stephen* and *Maud* the Empreſs, as alſo between the two Houſes of *York* and *Lancaſter*; each of whom, as they prevailed in their turns, were very well contented to make the Subjects take the ordinary Oath of Fidelity to themſelves, without abjuring each other's Title: and even in the later times of the Rump-Parliament, when the moſt violent and hot-headed Commonwealths-Men would have impoſed an Oath of Abjuration of *Charles Stuart*, and all his Family, (as they then termed his late Majeſty) the moſt wiſe and moderate Men among them, ſuch as *Lenthal* their Speaker, and others, ſtiffly oppoſed it, ſaying it would be a fighting againſt Providence to take an Oath never to own his Majeſty for their King, if once he ſhould come in again without their Aſſiſtance. And I think there is as much, if not more reaſon now againſt ſuch an Oath of Abjuration, as ever there was then.

F. I cannot deny but you have ſpoken like an honeſt Man, in abſolutely refuſing to act under this Government, tho without an Oath, unleſs you could be ſatisfied of the Lawfulneſs of the Powers to whom it is taken: and I muſt acknowledge that you therein act with much more Sincerity and Honour than divers of your Party, who tho they have been, and are of your Opinion as to the Juſtice of King *James*'s Title, yet think they may take this Oath well enough in that looſer and more qualified Senſe you grant they put upon it. And therefore to anſwer in the firſt place what you have ſaid againſt the impoſing any more explicit or ſtricter Oath of Allegiance than what is already appointed,

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tho I think I can very well anſwer all the Arguments you have now brought againſt it; yet to let you ſee I am a fair Adverſary, I will ſhew you how far I agree with you, and wherein I muſt differ from you.

In the firſt place therefore let me tell you, that you very much miſtake me, if you believe that by this new Oath I propoſe, I do deſign an expreſs Abjuration of King *James*, or the Prince of *Wales*, in caſe that King ſhould ever happen to recover the Throne, and call a Parliament who ſhall again recognize him for lawful King, and the Prince for the right and undoubted Heir of the Crown. I am too ſenſible of the frequent Alterations that have happen'd in this Nation, even to deſire or propoſe any ſuch thing, ſince a Man may as well abjure the having a Fever or the Small-Pox; Change of Government, and conſequently our Submiſſion to it whenever it happens, being no more in our power to prevent, than the having thoſe Diſeaſes. All therefore that I intend by a ſtricter and more explicite Oath of Allegiance, is only for Men who ſhall undertake any Employments of Truſt and Conſequence, either Spiritual, Civil, or Military in the Commonwealth; ſince I grant the Oath, as it is now worded, may be ſufficient for all ordinary Subjects, from whom a paſſive Submiſſion and true Obedience is a ſufficient Performance of their Duty: but as for all others that either now have, or expect to enjoy Places of Truſt, I could wiſh a ſtricter Oath were enjoin'd, aſſerting their preſent Majeſties to be lawful and rightful King and Queen of this Kingdom, and that the Taker will defend them in the preſent Poſſeſſion of it, to the utmoſt of his power, againſt all Perſons whatſoever, King *James* and the Prince of *Wales* not excepted. And this I muſt think neceſſary, not only from that low and qualified ſenſe of this Oath, which I gave at the beginning of this Night's Converſation, and in which ſenſe you cannot deny but that many, if not the greater part of thoſe who ſtill hold ſuch Employments, have lately taken it; and as long as they do ſo, how they can ever think themſelves obliged to defend their Majeſties againſt King *James*, nay, or any *French* or Popiſh Forces that ſhall act by his Commiſſion, I cannot underſtand: for ſince they now look upon the preſent King and Queen to have no other Right to the Crown than what their bare Power and preſent Poſſeſſion of it gives them, no wonder if ſuch Men take the firſt opportunity to revolt, and join with King *James* as ſoon as ever he lands with an Army, or appears upon our Coaſts with a Fleet formidable enough to oppoſe ours; and they muſt alſo (if they are true to their Principles) in the mean time do all they can to protect and indemnify thoſe, who, being of tender Conſciences, cannot ſtretch it as far as themſelves, and who underhand do act as far as they dare for King *James*'s Intereſt. And tho it is true you have very ſolidly proved, not only as a Civilian, but like a Lawyer, that the word *Allegiance*, inſerted in this Oath, does of its own nature imply not only that the King or Queen to whom it is taken ought to be rightly and lawfully ſo, but that more than a bare Neutrality, *viz.* a real and vigorous Defence of them and their Right againſt all their Enemies, is required and imply'd by it; and that is one great reaſon why you ſay you cannot take it. Now tho I confeſs the Reaſons you have given are very weighty and convincing, yet ſince the words are in themſelves too general, and doubtful for every Perſon that takes or holds ſuch Offices or Employments of Truſt, to underſtand it in that ſenſe, I could be glad there were another more plain and explicite Oath to be adminiſter'd to thoſe who expect to keep or hold ſuch Employments; ſince the preſent Government cannot well be ſafe without it, as long as ſuch Perſons are employed, who can take the Oath with a mental Reſervation of ſerving King *James*, as ſoon as they ſafely may by virtue of that former Oath of Allegiance they have taken to him.

This being the caſe, I ſhall now anſwer all the Objections you have brought againſt it, which indeed are rather framed to keep thoſe Men in Places, that they may ſerve your Deſigns whenever they are able, than to do any ſervice to tender Conſciences. Firſt then I think I may maintain, that ſuch an Oath will, notwithſtanding what you have now ſaid, have contrary Effects than what you are pleaſed to allow: for in the firſt place, it will gain the preſent Government more new Friends amongſt theſe Neuters, who ſteer their Allegiance to it only from its preſent Settlement, and the hopes of its Continuance, when they find that none can be employed in places of publick Truſt, who will not take an Oath to acknowledge their preſent Majeſties to be lawful and right-

ful King and Queen, and who will alſo ſwear to defend their juſt Right, which will for the moſt part put places of Truſt into their hands, who will think themſelves obliged faithfully to perform what they have ſworn. Secondly, it will alſo fix the old Friends of this Government faſter to it, when they ſee none but themſelves, or thoſe who will really come into the Government upon their Principles, admitted to ſuch Places of Profit and Truſt; and whoever will take this Oath, are to be preſumed to take it willingly and wittingly, and underſtanding what they do, ſince the words will be of themſelves ſo plain and evident, that they will admit none of thoſe looſe and doubtful Senſes in which ſo many have taken the preſent Oath of Allegiance. But your main Objection againſt this is, that a new Oath will not diſcover ſecret Enemies to the Government, becauſe that moſt of the ſame Perſons that have taken the former Oath, will take any other that can be required of them; which I ſuppoſe is not ſo, ſince you your ſelf do grant that ſuch an Oath would be a Snare to a great many, who if it were not for that, would ſerve this Government faithfully enough, that is to ſay, as long as there is no neceſſity of ſhewing their Good-will to King *James*, or no opportunity given of returning to their former Allegiance to him with ſafety to themſelves: and you your ſelf cannot deny but, according to their Principles, they muſt needs perform it whenever they think they may. Now certainly it were better to be rid of ſuch falſe Friends (if it were poſſible to diſcover them) by ſuch an Oath, than to keep them where they are, only to take an opportunity not only of doing a miſchief, but of ſerving this Government very careleſly and lukewarmly, whilſt they are in thoſe places they enjoy; as alſo of favouring and aſſiſting thoſe that are the declared Aſſertors of King *James*'s Right as far as they dare. So that then all the Diſpute remains about thoſe, who having Conſciences large enough to ſwallow any Oath whatever, provided it will ſuit with their preſent Advantage; no Oath can tie them, or ſerve to diſcover their private Sentiments: as I cannot deny but that there are too many Men of ſuch large Conſciences as you deſcribe, and could heartily wiſh they were fewer. Now tho I grant an Oath alone will not keep them out, yet it might be in great part prevented, if the King would take a true Character of the Men fit for publick Employment from thoſe about him, of whoſe Worth and former Integrity he is already fully ſatisfied. But admitting ſome ſuch Men ſhould get into places, and conſequently when they are in, manage things for their own Advantage, (that is, vilely and corruptly;) yet even theſe will not prove half ſo fatal to the Government as thoſe Men of half Conſciences, who think they may take this Oath in their own ſenſe, and for their own preſent advantage; and alſo believe it no Breach of it to aſſiſt King *James* whenever ſafely they may, becauſe they hold their preſent Oath to be only temporary, but their former to have a perpetual Obligation upon them; whereas thoſe of no Principles never eſpouſe any Intereſt longer than it ſerves their own turns. So that as long as they can make their Fortunes under this Government, they will never deſire to change it for another, in which they cannot but expect a much leſs free Enjoyment of their Liberties and Properties, which are things that all Men (as well thoſe who have no Principles, as well as thoſe that have) deſire to enjoy. And laſtly, ſome even of theſe Men that have been formerly notorious Aſſertors of and advanced in the Arbitrary Government of King *James*, out of ſhame as well as fear of the loſs of their Credits with thoſe of their own Party (which they are not aſſured but may again prevail) will ſtick to take this ſtricter Oath, tho they do not that which is now enjoined, ſince they can find an Evaſion for the one, but will ſcarce be able to do it for the other.

M. But pray tell me, will not this new Oath, declaring King *William* and Queen *Mary* to be lawful and rightful King and Queen of this Realm, and that all Men that take it ſhall aſſiſt them againſt their Enemies, prove an imply'd Oath of Abjuration of King *James*, tho not in expreſs Words? And you have not yet ſhewed me that ſuch an Oath hath ever been adminiſtred during all the various Conteſts that have been for the Crown ſince the Conqueſt.

F. I allow that ſuch an Oath would be a virtual and implied Abjuration of King *James*'s preſent Claim to the Crown, and would alſo oblige all Perſons to fight againſt him, and hinder his regaining it; which tho I grant to be the deſign

ſign of it, yet would not ſuch an Oath oblige us at all to abjure the obeying King *James*, ſhould he ever by an irreſiſtible Providence be again ſet over us; ſince it is not abjuring of a future, but a preſent Right, which I now contend for. And that the antient Oath of Fidelity and Allegiance (as it is now called) was of the like nature, and taken in the ſame ſenſe with this I propoſe, I ſhall ſhew you from the Form of the Oath of Fidelity, which all Freemen were to take at fourteen Years of Age, as appears by King *William* the Firſt's Law, which I have ſo often cited; "Whereby all Freemen were to "affirm upon Oath, that within the Realm and without, they will be true "and faithful to King *William* their Lord, and preſerve his Lands and Honour "with all Fidelity, together with his Perſon, and defend them againſt all his "Enemies." So likewiſe in the antient Oath of Homage, which was taken by all the Earls, Barons, and Tenants *in capite* in *England* at the Coronation of our Kings, were theſe words; "I *N. N.* become your Liegeman of "Life and Limb, and earthly Honour, and Faith and Troth to you ſhall bear "to live and die, ſo help me God." And in the latter Oath of Fidelity or Allegiance, which Sir *H. Spelman* gives us out of the Cuſtomary of *Normandy*, the words were much the ſame, only the Perſon is there ſworn to be true and faithful to the King and his Heirs (which they were not before *Edward* the Firſt's time;) and alſo that they would hear of no Evil or Damage againſt them, which they would not hinder to their power. Now pray tell me, were not all theſe Oaths taken to the King for the time being, as lawful and rightful King? and ſince they were thereby to yield him Life and Limb, that is, were to defend him with their Lives againſt all his Enemies, then certainly all others who might pretend to, or claim the Crown, were included within this number. And tho it is true in theſe antient Oaths there is no ſwearing to the preſent King, as lawful and rightful King, yet theſe words were needleſs in that Age, when (as I have proved at our laſt Meeting) there was no difference between a King *de jure*, and one *de facto*; and whoever was crowned King, and elected or recognized by the Great Council of the Kingdom, was looked upon as lawful and rightful King, and as ſuch, was to be defended againſt all his Enemies: ſo that till that Diſtinction was broached, that there might be a King *de facto* different from the King *de jure*, (which I have proved was not elder than *Edward* the Fourth's Reign) there was no need of any mention of ſuch words in the Oath of Allegiance as lawful King, and lawful Heirs, which are firſt found in the Oaths of Allegiance and Supremacy preſcribed by the Statutes of Queen *Elizabeth* and King *James*: in the latter of which (it is needleſs to recite it *verbatim*) it is firſt ſworn, That the King's Majeſty is lawful and rightful King; ſecondly, there is an expreſs Abjuration of the pretended Authority of the Biſhop of *Rome*; which ſhews that the Abjuration of the Temporal as well as Spiritual Right of a foreign Prince (who claims it ever ſince King *John*'s Reſignation) is no new Invention: and laſtly, there is an expreſs Abjuration or Engagement to defend the King's Perſon to the utmoſt of the Swearer's power againſt all Conſpiracies and Attempts whatſoever. And why the ſame words may not be inſerted into this new Oath, as well as it was in thoſe, I can ſee no reaſon, ſince they are only declarative, and purſuant to the late Act of the Convention, whereby after the Declaration of the Rights and Liberties of the Subjects, King *William* and Queen *Mary* are declared, "That they were, and of right ought to be by the Laws of this "Realm, our Sovereign Liege Lord and Lady, and King and Queen of *Eng-*"*land*, &c."

Cap. 5.

Vid. Spelman's *Gloſſ. f.* 23. H.

M. Well, it is late, and beſides to no purpoſe to argue this point any longer, ſince it concerns not me nor any of my Principles what new Oaths you make and impoſe upon thoſe, whoſe Conſciences will never permit them to take them: what I have ſaid was only to ſhew you the Folly and Weakneſs of ſuch Oaths, and conſequently that they can be ſubſervient to no other end than a Renewal and Aggravation of the Sin of Perjury among us, which God forgive this ſinful Nation, among the many crying Sins it now groans under. Yet give me leave ſtill to mind you, that you have not given any Anſwer to the Objection I have made concerning the Schiſm that is like to follow, from the depriving of all ſuch Biſhops and Clergy that ſhall refuſe to take the new Oath by ſuch a time; which Deprivation being uncanonically ordained by the mere

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Lay-Power of the Convention, without the Authority of a Convocation or Synod, ſuch Proceedings are ſufficient cauſe for all of our way to break off all Church-Communion with you, as ſoon as the Archbiſhop of *Canterbury* and thoſe other Biſhops ſhall happen to be deprived, and new ones put in their places; ſince all Church-Communion wholly depends upon the Lawfulneſs of the Biſhops, who are the ſupreme Paſtors of our Church.

F. I forgot to ſay any thing of this, becauſe I ſaid ſo much concerning the new Oath I propoſed as fit to be taken by thoſe in places of Truſt; but ſince you deſire it, I ſhall ſay ſomewhat, tho not ſo large as I could ſpeak upon this Subject. Firſt, I muſt tell you, it is altogether a new Notion, and contrary to the Doctrine of the Church of *England*, whereby it is declared that the Kings of this Realm have the ſame Power with Perſons in the Church, as the Kings of *Judah* and *Iſrael* had among the *Jews*; therefore you muſt either depart from the Doctrine of this Canon, or elſe the King and Parliament (who are certainly as much the ſupreme Power of the Nation, as the Kings of *Judah* were to that of the *Jews*) may as well deprive the Archbiſhop of *Canterbury* (for example) for Treaſon, or Diſobedience to the Government, as *Solomon* did *Abiathar* for anointing his Brother *Adonijah* King. And beſides this, I can ſhew you many Examples of the like Power exerciſed by the *Roman* and *Greek* Emperors, in depriving and baniſhing not only Biſhops, but Patriarchs, for Matters of State, without any Sentence or Judgment of a Synod, or General Council of other Biſhops. If your Doctrine were true, the poor *Greek* Church would be in a ſad Condition, and all her Members in a perpetual Schiſm for ſome Ages paſt, ſince there have been ſcarce any Canonical Elections or Deprivations of the Patriarchs of any of the great Sees, *viz. Conſtantinople*, *Antioch*, and *Alexandria*, but they are all nominated, and put in and out at the Grand Signior's, nay Viſier's will and pleaſure; as any Man, who will but peruſe Sir *Paul Ricaut*'s Account of the *Greek* Church, may eaſily ſee.

But indeed you fall into this Error for want of conſidering the Original of Biſhopricks in *England*, and the true Meaning of this intended Deprivation: for pray take notice, that tho Epiſcopacy was ſettled in *England* in the time of the *Britons*, yet all the Sees, and Juriſdiction of the Biſhops of this Realm, in reſpect of ſuch and ſuch Dioceſſes, have been wholly owing to the Bounty of our Kings, and the Authority of our Great Councils, which were alſo confirmed by the Pope's Bulls; and ſince the Reformation, to the Authority of the King and Parliament, as were all the Biſhopricks erected in *Henry* the Eighth's Reign. So that the Biſhops mere Spiritual Power of Ordaining, Excommunicating, *&c.* may be derived immediately from Chriſt if you pleaſe, yet the Exercife thereof, as limited and appointed to this or that Precinct or See, is as mere a temporal Inſtitution as that of Pariſhes, which was not introduced till long after Chriſtianity was ſettled in this Iſland. So that the Exerciſe of this Eccleſiaſtical Juriſdiction within the See of *Canterbury* (for example) being a Civil Inſtitution, it hath antiently belonged to ſupreme Powers not only to confer this Power (as appears by their antient Inveſtitures of our Biſhops *per Baculum & Annulum*) but alſo to take it away for Treaſon or Diſobedience againſt the State; ſince the King and Parliament do not pretend to deprive them of their Spiritual Character or Epiſcopal Orders, but only of their Right to exerciſe it within ſuch Sees or Dioceſſes. Thus, although the Archbiſhop of *York*, and the Biſhops of *London* and *Wincheſter*, with the reſt of the Popiſh Biſhops, were deprived by Act of Parliament in the firſt of *Elizabeth* for not taking the Oath of Supremacy; the Queen and Parliament never took upon them to degrade thoſe Biſhops of their Epiſcopal Orders, but only to forbid their acting as Biſhops in their former reſpective Dioceſſes. And therefore I doubt not but notwithſtanding this Deprivation, thoſe Biſhops might (if they had pleaſed) have ordained Prieſts, and confirmed Children, and that ſuch Ordinations and Confirmations would have been good even in our Proteſtant Church, if ſuch Prieſts or Children had afterwards turned Proteſtants; ſince it is very well known that the Church of *England* owns the Orders of the Church of *Rome* to be valid, which is more than we do for the Ordinations of mere Presbyters coming from thoſe Proteſtant Countries where there are no Biſhops at all: the like I may ſay for their Confirmations too.

But pray, Sir, consider how upon your Principles this Schism can be so universal as to influence and involve all *England* in it; for if the Archbishop of *York* (for example) will rather take this Oath than suffer Deprivation, and that the rest of the Bishops of his Province should be of the same mind (as I am credibly informed they will) pray tell me how the People of that Province (being a distinct Church, or Body Ecclesiastical, from that of *Canterbury*, as to all spiritual Matters, as having a distinct Convocation of their own) can ever be involved in this Schism by the Deprivation of the Archbishop and Bishops of the Province of *Canterbury?*

And pray also tell me, in the next place, how all the Members of the two Universities can ever be involved in this intended Schism, since they owe no Canonical Obedience to the Archbishops of *Canterbury* or *York*, nor to any other Bishop, but only to their Chancellor, and the Vice-Chancellor as his Deputy, who exercise all Ecclesiastical Jurisdiction within the said Universities; and therefore their Church-Communion cannot depend upon the Canonical or Uncanonical Deprivation of any Bishops in *England*. I desire you to consider these things as a Canon-Lawyer, and give me your Answer, if you can, against the next time we meet, and then tell me whether the Causes of this threatned Schism be so just and apparent, that it is like to involve so many of the wisest and most considerate of the Clergy and Laity into open Separation from the Church, as you suppose it will. Not but that I will grant there be many of the Clergy of this Opinion, who, as well out of Conscience as for their own Interest, will be contented to set up and encourage such a Separation, thereby to make themselves Heads of separate Congregations, when they shall be deprived of their present Benefices and Employments, upon their refusal of this Oath.

M. I must confess I never heard so much said upon this Head before, and if you could make out to me all the Matters of Fact you have now instanced in, I know not but that I may come over to your Opinion; tho let me tell you, this is the first time that ever you could shew me that any Bishops were deprived in *England* by the mere Lay-Authority of the King, and a Great Council or Convention of the Laity, whilst they continued of the same Church-Communion with those Bishops: for as to your Instance of the Popish Bishops deprived by Parliament in the Reign of Queen *Elizabeth*, I doubt you will find it does not come up to the point in question, since the Queen and Parliament having then newly declared themselves Protestants, did not own them for true and Orthodox Bishops, and consequently thought they might justly depart from their Communion, and upon the same account might deprive them, and the Queen might then nominate others of her own Religion in their places.

F. I cannot but differ from you in the Matter of Fact, as you now relate it; for Queen *Elizabeth* and the Parliament were, when they made this Act, so far from being separated from the outward Communion of the Church of *Rome*, that Mass was then said, and the *Romish* Priests still continued in all the Parishes and Churches of *England*; and yet they still maintained an outward Communion, tho their Bishops were deprived by the Civil Power, and others ordained in their stead. So that it is plain the Papists themselves had then no Notion of this new Cause of Schism, by reason of their Bishops being uncanonically deprived; nor indeed can we well vindicate the Honour or Legality of our Reformation, if the Protestant Bishops who succeeded in the places of those who were thus deprived by Act of Parliament, could not be Canonical, because their Predecessors deprived by the Lay-Power were still alive.

Vid. Dr. Burnet's *History of the Reformation, Part* 2.

And to shew you that the King and Parliament have deprived even Bishops of their own Communion, and that such Deprivations have been held good, and that the King hath nominated new Bishops upon the Vacancy, you may see in Dr. *Burnet*'s *History of the Reformation*, and in the *Appendix* to it; where you will find a memorable Act of Parliament of the 25th of *Henry* the VIIIth (before his Departure from his Obedience to the See of *Rome*) whereby Cardinal *Campegio*, and *Hieronimo de Ghinicci* were deprived of the Bishopricks of *Salisbury* and *Worcester*, which they had held for near twenty Years, and *Campegio* had without doubt been installed in it when he was in *England*.

P. 148. P. 123.

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The Act it self being so remarkable, I shall give you some Passages out of it *verbatim*: First the Preamble sets forth, "That whereas before this time "the Church of *England*, by the King's most noble Progenitors, and the No- "bles of the same, hath been founded, ordained, and established in the Estate "and Degree of Prelacy, Dignities, and other Promotions spiritual, *&c.*" (which sufficiently confirms what I but now asserted, that all the Bishopricks were founded by our Kings, with the Consent of their Grand Councils or Parliaments;) and then it proceeds to recite, That whereas all Persons pro- moted to Ecclesiastical Benefices ought to reside within the Realm, for preach- ing the Laws of Almighty God, and keeping Hospitality; and since these Pre- lates had not observed these things, but lived at *Rome*, and carried the Re- venues of their Bishopricks out of the Kingdom, contrary to the Intention of the Founders, and to the great prejudice of the Realm, *&c.* in consideration whereof, it is enacted by the Authority of this present Parliament, "That "the said two Sees, and Bishopricks of *Salisbury* and *Worcester*, and either of "them, henceforth shall be taken, reputed, and accounted in the Law to be "void, vacant, and utterly destitute of any Incumbent or Prelate." And then follows a Clause, enabling the King, his Heirs, and Successors, to nomi- nate and appoint Successors (being the Natives of this Realm) to the said Sees, and the King did nominate Successors according to the said Act.

But admit this was the first time that ever it had been thus practised, yet if it were then reasonable, and done upon good grounds, I cannot see but when the Necessity of the Church and State require it, and that the Clergy in Con- vocation are so wilful and wedded to some old false Notions, as not to con- sult the Peace and Safety of the Church and Kingdom; why the King and Queen (who are acknowledged to be supreme over Ecclesiastical as well as Temporal Persons) may not, together with the two Houses of Parliament, make the like Law now, as was done in the first of Queen *Elizabeth*, for a less matter: for none of those Popish Bishops, tho they believed Queen *Elizabeth* to have no better than a Parliament-Title to the Crown, yet ever denied her to be their lawful and rightful Queen, only they would not own her Supremacy in Spiritual Matters.

So leaving the farther Discussion of this Point to those who better under- stand it, I would gladly know of you what you intend to do, and what you would have us do, who are like to be made Deputy-Lieutenants and Justices of Peace: for if, as you your self allow, there be a necessity that some Civil Government be maintained during King *James*'s Absence, I desire to know of you, how it can be managed, and who shall manage it, in case all the Gentle- men of *England* were of your Principle, and should positively refuse the Oath of Allegiance to their present Majesties. For if King *James* be ever so much our lawful King, it is not now possible for us to be governed by him since he is gone, and God knows whether ever he may return again. Since then you cannot have him if you would, and that there is a necessity we should be governed by some body; and since it is also as certain, that those who actually govern us will exact this or the like Oaths of Allegiance from us, as were due to their Predecessors, and that no Man must expect to enjoy or execute any Place or Office, not only of Profit, but of Burden and Charge, for the necessary execution of Justice, and the maintenance of Civil Govern- ment (without which we cannot live or subsist) without taking this new Oath of Allegiance, as the only means to qualify them for it: If then the end, *viz.* Civil Government, be absolutely necessary, and the taking of this Oath is the only means allowed of to qualify Men for it; this seems as evident to me, that taking of this Oath is not only justifiable by Law, but by Reason and good Conscience, since it is done for the highest and noblest end, *viz.* the publick Good of the whole Nation or Commonwealth, which you grant can- not subsist without some kind of Civil Government amongst us.

M. I will say something in answer to what you have now alledged concern- ing the necessity of taking of the Oath, in order to the maintenance of some Civil Government, without which I grant the King's good Subjects cannot subsist till his return; since I confess this is the strongest Argument you have yet brought, all I can say to it at present, is, that if all your Country Gen- tlemen, and all the Lawyers in *England*, would be so firm in their Loyalty to

his

his Majeſty, as unanimouſly to declare that they cannot take this Oath with a ſafe Conſcience; the Conſequence then would be, that either the preſent uſurped Power muſt be forced to give up the Government to the right Owner, or elſe they muſt at leaſt deſiſt from preſſing this Oath upon you.

F. You know well enough this is altogether a vain Suppoſition, ſince you cannot but be ſenſible that their Majeſties have not only a ſufficient Force both of native *Engliſhmen* and Foreigners on their ſide, who can force thoſe, who ſhould make any oppoſition, to the taking it; but that there are alſo many Fanaticks and Commonwealthſmen, who not looking upon themſelves at all obliged by your Notions of natural Allegiance, and the Obligations of any former Oath of Allegiance, will get into all the Offices and Imployments of the Kingdom, to the great Prejudice and Deſtruction, not only of the Church, but the Monarchy it ſelf, which is as yet preſerved, tho the Perſon that adminiſtred it is altered. So that it would conduce nothing to King *James*'s Affairs, if all the Gentry and Lawyers of the Kingdom ſhould go about to refuſe this Oath; which, as I have already proved, they are alſo obliged to take by the Law of the Land, and alſo that greater Law of proſecuting the publick Good of the Nation, to the utmoſt of their power.

M. Well, ſince I cannot expect ſo great firmneſs of Mind and Courage from your Country-Gentlemen, and eſpecially the Lawyers, who have been always but too forward to comply with all Governments, how unlawful ſoever; and ſince you, who think that you may lawfully take this Oath, not only by the Law of the Land, which you have interpreted to countenance your Opinion, but alſo from a higher and nobler Law, *viz.* that of the common Good of the Nation, or Civil Society; which I grant muſt be maintained during the King's Abſence, ſince you ſay there is a neceſſity for it: tho I am not fully ſatisfied of the Lawfulneſs of it ſo far as to take it my ſelf, yet will I not abſolutely condemn you, or any other ſincere and honeſt Men, who do only take it out of a good intent to maintain ſome Civil Government amongſt us, and alſo to the keeping out the Fanaticks from having any ſhare in it: and I hope the Government will excuſe me, if my Conſcience will not give me leave to take it my ſelf, ſince there are enough of you who are free to do it without us. So that if I cannot keep that ſmall Imployment I have, without taking this new Oath, I will freely give it up, ſince I am not ſatisfied in my Conſcience of the Lawfulneſs of it; and whatſoever is not of Faith, is Sin, as the Apoſtle has truly defined it.

F. I confeſs you ſpeak very honeſtly and charitably in this matter, and I could wiſh all thoſe of your Opinion had the like Moderation, and that they would not condemn of wilful Perjury ſo many good Biſhops, Noblemen, Gentlemen, and others, both of the Clergy and Laity, who have been perſuaded that they might take this Oath with a ſafe Conſcience; and therefore pray, however we differ in Opinion about theſe matters, let us maintain the ſame Friendſhip for each other as we had before.

M. Sir, I readily embrace ſo fair and kind an Offer; and as I hope you will do me what kind Offices you can whilſt you continue to act under this Government, ſo will I promiſe to do the ſame for you, whenever the King ſhall come to be reſtored to his Throne again.

F. I willingly and thankfully accept the Propoſal of the Continuance of your Friendſhip, ſince I look upon your diſſenting from me, not to proceed from any Wilfulneſs or Obſtinacy, but out of a tender Conſcience, and too great and high a ſenſe of your Duty, which I muſt ſtill confeſs are Errors on the right hand: and therefore now taking my leave of you, ſhall only deſire you to believe me your real Friend and humble Servant.

M. I hope you think I have the ſame Eſteem for you, and therefore muſt always own my ſelf yours.

Bibliotheca Politica.

DIALOGUE XIV.

That the Arraigning and Murder of King *Charles* I. can by no means be juſtified by the Proceedings of the Convention-Parliament againſt King *James* II. upon his Abdication; the Grounds and Manner thereof being wholly different. Proved by an exact Relation of the Beginning, Progreſs, and Iſſue of the late Civil War.

M. I Am come this Evening to diſcourſe with you about ſomewhat that I have heard to-day, which has very much raiſed my Spleen againſt all the complying Clergy, who juſtify this Revolution; and it ſatisfies me, that moſt of them are no better than downright Hypocrites and Turncoats.

F. Pray, Sir, be pleaſed to tell me what it is that has put you into this Ferment.

M. I ſhall, and am glad to find you ſo willing to hear me. You muſt know then, that this being the 30th of *January*, the Anniverſary of the Martyrdom of that great and pious Prince, who fell on this day by the bloody hands of his rebellious Subjects, I was reſolved to go and hear one of our celebrated Preachers in the City, to obſerve how he would manage his Point; (which I muſt tell you I thought was a nice and tickliſh Subject) ſince I foreſaw, that as he muſt neceſſarily condemn that horrid and barbarous Fact, ſo he would likewiſe at the ſame time juſtify this Revolution, which was begun and carried on upon the ſame Principles, tho not by the ſame Perſons. And I was not deceived in my Expectations; for my City-Doctor was ſhrewdly put to it, and like an Aſs mumbling a Thiſtle, tho he condemned the Fact of this Day with great Warmth and Bitterneſs of Spirit, yet when he came to handle thoſe good old Church-of-*England* Doctrines of *Paſſive-Obedience* and *Non-Reſiſtance*, he touched them very gingerly, becauſe he was afraid they would go near to prick his Chops: therefore being ſenſible that this Revolution was not to be juſtified upon thoſe Terms, he fell into a ſtrange fantaſtical Hypotheſis, *of God's ways in diſpoſing of Kingdoms*; and that the Prince of *Orange*, by the wonderful Succeſs of his Arms againſt King *James*, was, by a kind of mixed Right of Conqueſt and Election, become our King, and by God's Providence wonderfully declaring it ſelf in his favour, he might, nay ought to be lawfully owned and recognized as ſuch by all the Subjects of this Kingdom: but yet that it was ſtill downright Rebellion before God for any private Perſons to conſpire

conſpire or make war againſt the King, which I thought very ſtrange Doctrine: Since the Prince of *Orange* ſet forth in his Declaration (which we have no reaſon to disbelieve) that he was invited over by divers of the Biſhops, Peers, and Gentlemen of the Kingdom; which was ſo far made good, that one of the firſt, and divers of the ſecond and third Orders, either declared for him, or actually went in to him upon his Landing, beſides thoſe who came over with him in a military Poſture. But how they could be juſtified by this Doctor's Principles, let thoſe look to it whom it concerns.

But I am ſure his whole Sermon was ſo far from edifying, that it gave great occaſion of Scandal and Offence to all the honeſt and judicious part of his Auditory: for if God's Providence muſt be brought in to juſtify, at every turn, a Rebellion or Revolution (as it is now more ſoftly worded) I cannot ſee why the Murder of King *Charles* I. may not alſo be juſtified upon thoſe very Principles; it being ſufficiently known to all that lived in thoſe times, that *Cromwel* and the *Rump* appealed to their ſtrange and wonderful Succeſſes and Victories over the King, and God's delivering him into their hands (all which in their Cant they called *Providences*) as an Indication that God had deſigned him to be taken off in the manner he was; and that their wicked, illegal, and tyrannical Power was that which was thereby ſanctified and ordained by God, and to be ſubmitted to and obeyed, according to the Apoſtle's Precept, *Let every Soul be ſubject to the higher Powers, the Powers that be are ordained of God*, &c. So that by ſuch a plain and manifeſt wreſting of Scripture, the moſt open and barefaced Rebellions and Uſurpations, when they prove ſucceſsful enough to carry the outward ſhew of a Civil Government, muſt preſently be owned as God's Ordinances: and if this muſt paſs for ſound Doctrine, I think it were better wholly to lay aſide the Obſervance of this Day, tho appointed by Act of Parliament, than thus to mock God, and at the ſame time condemn an Action, when done by thoſe we call by the hard names of *Rumpers*, *Commonwealthſmen*, and *Fanaticks*; and yet in the ſame breath juſtify the very like Practices of thoſe who now call themſelves Aſſerters of the Monarchy, and ſeeming Members of the Church of *England*, who have ſolemnly declared King *James* to have abdicated the Throne, upon the Breaches of I know not what original Contract, and fundamental Laws; and it thereby becoming vacant, have placed the Prince of *Orange* and his Princeſs on the Throne. And the long Parliament, after their ~~ex~~ecrable Murder of King *Charles*, might, with the like Right and Juſtice, have proclaimed *Cromwel* (the chief of his Enemies and Judges) for lawful King, as he ſet up himſelf afterwards for Protector by the like providential Title. Rom. 13. 1, 2.

And tho, I confeſs, the Prince of *Orange* hath not been ſo cruel to his Uncle and Father-in-law, as to impriſon him and take away his Life, but gave him an opportunity to make his eſcape; yet whether that did not more proceed from Intereſt, than either Mercy or Good-nature, I may have ſome reaſon to doubt: becauſe had the Prince either impriſoned him, or put him to death, it would have proved diſadvantageous to his Intereſt, and turned to his Prejudice, even among the common People of the Nation; and beſides, would have prevented the notion of the King's voluntary Abdication of the Government, which has been ſince ſo greedily ſwallowed by an hypocritical, or at leaſt an unthinking Party of the Houſe of Commons. And how they would have proceeded againſt his Perſon (had he ſtay'd here) God knows: for they might with the ſame Juſtice have taken away his Life, as declared him to have abdicated; that is, (as you your ſelf confeſſed at our laſt Meeting) forfeited his Crown. So that to conclude, I ſee no Difference but the changing of the Names of the Perſons, that can juſtify this Revolution from the ſame Imputations of Treaſon and Rebellion, as the Murder of King *Charles* I. for tho his Son is ſtill (God be praiſed) alive in *France*, yet the Party you have ſo much vindicated have done all they can to deſtroy his politick Perſon, by declaring him actually deprived of all Sovereign or Regal Power as lawful King of *England*.

F. You have made a ſharp Diſcourſe againſt the Murder of King *Charles* I. and Abdication of his Son King *James* II. in great part of which, as I ſhall not oppoſe you, ſo, I hope, the unwary and indiſcreet handling of this Subject by ſome of our City-Preachers, will not prejudice you againſt the late

Revolution, and placing the Prince of *Orange* on the Throne. For I agree with you, that a temporal Succeſs or Victory of any Party of Men, nay of a whole Nation againſt an Enemy, either foreign or domeſtick, ought not to be urged as an evident Token of God's approving the Cauſe they were engaged in; being ſenſible, that this Argument has been made uſe of not only by *Cromwel* and his long Parliament, both before and after the King's Murder, and is indeed the common Topick and Refuge of all unjuſt Force and Violence committed in the World, and ſerves the *Turks* at this day for their main Argument of the Truth of their Religion, and the Juſtice of their Arms againſt the Chriſtians: and therefore before ever we give a Judgment concerning God's Allowance of ſuch Actions (tho ever ſo amazing and ſucceſsful) we ought to diſtinguiſh between God's permiſſive, and his declared and expreſs Will or Providence; without the former of which, no human Actions, whether good or bad, could ever be brought about: ſince tho he has ſo wiſely contrived all the Affairs of the World, that even the wicked Actions of Men do turn to his own Glory, and the common Good of Mankind, yet his direct and declared Will ought never to be made uſe of as an Argument, but where the Scriptures ſo declare it, or that the apparent Juſtice and Merits of the Cauſe may make us preſume, that God, by his granting Succeſs, does likewiſe allow the Juſtice of the Cauſe.

I have not therefore, in whatſoever I did or ſhall ſay on this Subject, drawn any Argument for the preſent Government from that head, nor found their Majeſties Right to the Throne on the fallacious Topick of Succeſs. But as for your main Objection, and which ſo much ſcandalizes a prejudiced and inconſiderate Party of our Church, that this Revolution (if adhered to) will ſerve to juſtify the depoſing and murdering of King *Charles* I. I utterly deny; ſince there are a great many, and thoſe very material, Differences between that Fact, and the Abdication of the late King.

I ſhall therefore proceed to ſhew you theſe grand Differences between thoſe two Tranſactions; which I ſhall do, Firſt, by enquiring into the Beginning and Original of the Diſputes between King *Charles* and his Parliaments, and then comparing them with thoſe which lately happened between the late King *James* II. and his Parliament, and his Proceedings after its Diſſolution: So that if we look back upon the Actions of both theſe Princes, and the Proceedings of the Parliament and People of *England* in oppoſition to them, we ſhall find them vaſtly different. Firſt, As to the Original of them, King *Charles* was left involved in a War with *Spain* by his Father, and being not long after unluckily engaged in another with *France*, and denied any Aſſiſtance in three ſucceſſive Parliaments, I grant he was forced, for the carrying on of theſe Wars, to take very illegal Courſes by Loans, and Privy Seals, and other ways to raiſe Mony; and being ſo often diſappointed of his Expectations of receiving any Benefit by Parliaments, it was no wonder if that Diſlike was afterwards, by ſome evil Counſellors about him (who feared to be called to an account for what they had acted contrary to Law) heightned to a perfect Averſion to them, and he put upon to raiſe Ship-mony by the bare Opinion of the major part of the Judges, contrary to Law. Yet to ſay truth, this Mony was not vainly ſquandered away, but really laid out for the uſe of the Navy, in buying in of Naval Stores, and building of Men of War, the *Royal Sovereign* being made out of that Mony. But when the neceſſity of the King's Affairs, upon the breaking out of the *Scotiſh* War, obliged him to call a Parliament, he then offered, if he might have a ſufficient Aſſiſtance againſt them, to have redreſſed all thoſe Grievances; and had certainly done it, had not the Houſe of Commons, by denying the King that reaſonable Aid he required, obliged him to diſſolve them. But when the long Parliament in 1640. came to ſit, the King having then, upon the Earl of *Strafford*'s and Archbiſhop *Laud*'s being impeached and committed to the *Tower*, and the Lord Keeper *Finch* and Secretary *Windebank*'s withdrawing themſelves beyond Sea, altered his Meaſures as well as his Counſellors, he condeſcended to paſs whatever Laws the Parliament thought fit to offer, to ſecure the Nation againſt thoſe juſt Fears of Popery and arbitrary Government, which then ſo much perplexed them: So that after all theſe unparallel'd Condeſcenſions, they had no juſt reaſon longer to continue their Jealouſies and Diſcontents, unleſs they could wreſt from the

King

King the whole Power of the *Militia*, which gave the firſt occaſion to that unhappy Civil War.

M. I grant what you ſay to be in great part true; and yet upon your Principles this will not do the buſineſs: for if the King, upon any wilful breach of the *Original Contract* (as you call it) and obſtinately perſiſting in it, may be reſiſted by the People, and declar'd to have *abdicated* the Government, upon ſuch wilful Invaſions of our fundamental Laws and Liberties; (King *Charles* I. having alſo knowingly perſiſted in thoſe Violations after his granting the *Petition of Right* ſo ſolemnly, in his third Parliament; and after many Petitions of divers of his Subjects againſt thoſe Oppoſitions, yet they were ſtill continued:) ſure he might with as much Law and Juſtice have been reſiſted, and have had Arms taken up againſt him by the People of *England*, as have been lately againſt his Son: And upon King *Charles*'s refuſal to redreſs them, might alſo have been declar'd by the Parliament to have abdicated the Kingdom, by renouncing the lawful way of Government of it, according to your ſuppoſed fundamental Conſtitutions thereof. And yet for all that, the Long-Parliament it ſelf, tho they declar'd that the King's ſetting up his Standard at *Nottingham* was an actual making War upon the People of *England* in their Repreſentatives; yet neither then, nor in the very heat of this War did they ever arrive to that degree of Impudence, as to declare the King to have broken his *Original Contract*, and thereby to have *abdicated* the Government; but ſtill continued their Addreſſes to him for Peace, if they might have had it upon their own Terms: nor yet when they had voted no more Addreſſes to the King, did they ever declare that he had *forfeited* the Crown by his wilful Breach of the Laws, and making War upon his People. Theſe things, I ſay, were never done by them, till *Cromwell* and the Army, with the Independent Party in the Houſe, firſt declar'd at *St. Albans*, That the King, by beginning a War upon the People, had committed Treaſon againſt them. But your *Convention* has quite outſtript the old *Presbyterians*, and have not only laid aſide the King as they did, but have alſo taken from him the very Title of King, and have declar'd him to have *abdicated* the Government; which Act, I doubt, can never be juſtified by your Notion of making him forfeit the Throne by a tyrannical Adminiſtration, and ſo to depoſe himſelf.

F. I am very ſorry to ſee you ſo hard put to it, as to find no way to juſtify the late King's Miſcarriages, but by comparing them with thoſe of his Father's Reign; which tho I grant them to be very great, and in ſome things worſe than thoſe of his Son's, yet were they chiefly at the beginning of his Reign, and indeed before he had granted the *Petition of Right*, when he had in truth very much violated the Laws of the Kingdom, by exacting *illegal Loans*, and *Impriſoning* thoſe that refus'd to pay them; as alſo by levying *Soldiers*, and requiring the Counties to furniſh the Charges of *Coat* and *Conduct-Mony* for them, contrary to Law. I grant alſo that his appointing Commiſſioners to try, condemn and execute Soldiers by Martial Law in time of Peace, was againſt the known Laws of the Land, as alſo quartering them in private Houſes, whether the Owners would or not; and then his impriſoning divers People of Quality without any Cauſe ſhewn, or Time limited, and without ſuffering them to be delivered by *Habeas Corpus*, as by Law they ought. All which Grievances being briefly ſummed up in the *Petition of Right*, were (tho not without ſome difficulty) at laſt redreſs'd by the King, in that remarkable Anſwer, I have already cited, *Soit Droit fait come il eſt deſiré.* And altho there may be a great deal ſaid by way of Excuſe in the King's behalf, for thoſe Illegal and Arbitrary Proceedings; as that he then found himſelf engag'd in a War with the *Emperor* and Houſe of *Auſtria* about the *Palatinate*, and that at the deſire of the Parliament; and notwithſtanding when he could receive no aſſiſtance from them in the three firſt Parliaments of his Reign, he was forc'd to make uſe of thoſe exorbitant Methods to raiſe Mony to carry on an unſucceſsful War againſt *Spain* and the *Emperor*, in order to reſtore the Prince *Elector* his Brother-in-law to his Inheritance: tho who were the Cauſe of this Neceſſity, whether the King or the Houſe of Commons, I ſhall not now diſpute. But whoever was in the fault, it was ſufficient that the King redreſs'd all thoſe Grievances in the third Parliament of his Reign. And yet even before that time, I affirm there was no juſt Cauſe for the People to take up Arms, ſince (as I ſaid at firſt) thoſe

Oppreſſions

Oppreſſions were either but light, or elſe fell only upon ſome Trading Men; and I have already laid it down for a Rule, "That it is never lawful to reſiſt "the King's Commands by Force, but when they ſtrike at the very Root of "the Conſtitution, and become not only general, but inſupportable by the "Subjects, and that there are no hopes left of redreſs by Parliament; which "I do not ſee was the Caſe at that time, ſeeing the King at laſt did remedy "all thoſe Grievances by a Parliament."

M. I grant it might be as you ſay; but did not the Nation quickly fall into freſh Diſcontents by the King's exacting of *Tonnage* and *Poundage* from the Merchants, before thoſe Duties had been new granted and confirmed by Act of Parliament? And alſo, by his clapping up divers of them for refuſing to pay it? Nay, did he not alſo, ſome time after this, by the Opinions of almoſt all his Judges, and Advice of his Privy Council, levy *Ship-Mony* upon the whole Kingdom by his own Proclamation, and committed divers Gentlemen to Priſon that refuſed to pay it, nor would admit of any *Habeas Corpus* to releaſe them? I ſhall omit divers other things of leſs moment, ſuch as his *diſpenſing* with the Statutes againſt Popiſh *Prieſts* and *Jeſuits*, and his releaſing and pardoning of them, when they were condemn'd: as alſo his making ſeveral Popiſhly inclin'd Lord-Lieutenants, Deputy-Lieutenants, and Juſtices of the Peace; his turning out the Lord Chief-Juſtice *Crew*, becauſe he declar'd himſelf againſt the *Loan*; and impriſoning the Refuſers of it during pleaſure; and would alſo have turn'd out the Lord Chief Baron *Walter* upon the ſame account, had he not held his Place by Patent, *Quamdiu benè ſe geſſerit*; and yet nevertheleſs he was forbidden ſitting in that Court any more: which things are but the ſame in effect, as the *Convention* have put into their late Declaration againſt the preſent King; and therefore I muſt ſay again, that the one is no more to be defended than the other. But if theſe things did not deſerve any *Reſiſtance*, or *Abdication* of the Father; why ſhould the like, nay leſs, matters have that tragical effect upon the Son?

F. I ſhould not have deſir'd to enter upon this odious Compariſon, or to rake into the Aſhes of the Dead; yet, ſince you will put me upon it, give me leave to tell you my Opinion freely, of this part of the Reign of King *Charles* I. that thoſe Violations upon the Laws you mention, were ſo great and general, that had they been as obſtinately perſiſted in, when the Parliaments met in 1640, and 41, I doubt not but they might have produc'd (and that lawfully) the like Effects, as his Son's Miſcarriages have ſince brought upon him, by his going away, rather than he would ſuffer them to be redreſs'd by a Free Parliament. But his Father was better advis'd, and either redreſs'd thoſe Grievances and Oppreſſions the Nation complain'd of before thoſe Parliaments ſat, or elſe yielded to the Parliament's Declarations againſt them, and gave up the Offenders to be puniſh'd according to Law. Thus for example, before the Parliament ſat in 1640. he releas'd all thoſe Gentlemen and Merchants that were in Priſon, for not paying *Ship-Mony*, *Tonnage* and *Poundage*, &c. And as for *Ship-Mony*, he acquieſced with the Judgment of both Houſes, who condemn'd it as illegal; and left all the Judges that gave their Opinions for it, to the Judgment of the Parliament. He alſo ſign'd a Bill to take away *Tonnage* and *Poundage*; as alſo another to attaint the Earl of *Strafford* for endeavouring to introduce an Arbitrary Government, and ſubvert the Laws of the Kingdom. He alſo paſs'd ſeveral other Acts for the taking away of the *Star-Chamber*, and *High-Commiſſion Courts*, and even for taking away the Votes of the Biſhops in the Houſe of Peers: And laſt of all, he paſs'd that unparallel'd Act I now mention'd, of making the Parliament not capable of being adjourn'd, prorogu'd, or diſſolv'd, without their own Conſents: ſo that he omitted nothing (as I know of) that was deſir'd of him for the redreſs of all thoſe Grievances that the Nation then juſtly complain'd of; thoſe Perſons who were accounted the Authors of them, being either executed, impriſoned and fined; or elſe ſav'd themſelves by Flight.

But as for what you ſay about that King's pardoning Popiſh *Prieſts*, and ſuſpending the Laws againſt *Roman Catholicks*, and turning out of Judges; they were nothing like what his Son King *James* hath lately done in that kind. For in the firſt place, his Father never did more in pardoning *Prieſts*, than what Queen *Elizabeth*, and King *James* I. had often done before; who ſeldom or never

never executed any, only for being *Prieſts*, unleſs they had alſo been found guilty of ſome other Treaſon: Nor do I know of any Law there then was in force againſt *Roman Catholicks*, the Execution whereof was openly ſuſpended by any Proclamation; tho I confeſs thoſe Juſtices of Peace, who were found moſt active in putting ſuch Laws in execution againſt *Papiſts*, were commonly put out of Commiſſion: but as for the turning out of Judges, you can inſtance only in one who was ſo turned out, becauſe he would not agree to the *Loan*; and as for the other, you your ſelf grant it was only offer'd at, but could not be done: But what is this to the turning out of three, or four, or five Judges at a time, becauſe they would not conſent to give their Opinions as the Court would have them, even in matters of the higheſt Importance; and then putting Papiſts, or elſe Men of the looſeſt Conſciences, and leaſt Law, in their Places, as was lately done? What is the pardoning of a few *Prieſts*, and the ſilent exempting ſome *Roman Catholicks* from the Penalties of the Laws made againſt them, in compariſon of a *general* and *avow'd Suſpenſion*, not only of all Laws againſt them, but alſo of all thoſe concerning Religion whatſoever? This ſure was never practis'd by any King of *England* before our Times.

To conclude: Let us now ſuppoſe that in the Year 1641. the King, inſtead of redreſſing all thoſe Grievances and Violations of the Laws we have now mention'd, ſhould have withdrawn himſelf into *Ireland*, and there have join'd himſelf with the *Iriſh Rebels*, and by the aſſiſtance of the King of *France*, had made war upon this Kingdom; declaring that he would never put up his Sword, till he had made himſelf abſolute Maſter of all our Laws and Liberties: What think you the Parliament which was then ſitting would have done in this Caſe? Can you believe they would have ſat ſtill, without paſſing a Vote againſt the King's Arbitrary and Tyrannical Proceedings? No certainly, they would never have ſtopped, till they had declared him, by thus becoming a publick Enemy to his People, to have *abdicated*, or *forfeited* all his Right to the Government of this Kingdom; or elſe, I think, they could by no ways have ſecured the ſafety of it.

M. But pray let me ask you one Queſtion more, before you proceed farther, ſince you have not yet anſwer'd my Objection: Why did not the Parliament then do ſo, when the King did afterwards actually declare War againſt them?

F. There were ſeveral good Reaſons for that: As Firſt, Becauſe they could not but know in their own Conſciences, that the King, before his departure from *London*, had already given them all the Security, againſt thoſe Oppreſſions and Violations that had been formerly committed, as they themſelves could deſire. And Secondly, Becauſe they knew what they inſiſted upon with ſo much heat, to wit, the diſpoſing of the *Militia* of the Kingdom, had been in the King's and his Predeceſſors diſpoſal, from time beyond Memory; ſo that there needed an expreſs Act of Parliament to take it from him by Law, (as they themſelves at firſt acknowledg'd:) And it was nothing but the Tumults that were raiſed in *London* by the Rabble's coming down to petition the two Houſes, and by their violent inſiſting to have the whole Power of the *Militia* out of his hands (which was indeed to take from him the chief Regal Power, that of the Sword) could have thus forced him from the Parliament, and to take up Arms, when he had neither Men nor Mony to pay them, the Parliament having ſtopped his Revenues, ever ſince his going to *Hull*. And therefore, ſeeing they had no other Cauſe, but their own Fears and Jealouſies to juſtify what they did; they had no way to do that, but by laying all the fault upon the King's evil Counſellors, who had carried him away from his Parliament, to incite him to make war againſt it; to remove him from whom, and to bring him back to his Parliament, they made the chiefeſt pretence for the War: yet notwithſtanding there were ſtill left in the Houſe a great many honeſt well-meaning Men, call'd *Puritans* (the Name of *Presbyterian* being not yet in faſhion;) and who, tho they were againſt all Arbitrary Proceedings, yet nevertheleſs loved Kingly Government, and did not deſire his Majeſty's Ruin, ſo long as there were any hopes left of coming to an Agreement with him, upon ſuch Terms as they thought would beſt ſuit with the *Presbyterian* Diſcipline, and the Rights and Liberties of the People: and theſe were for ending all Differences by a fair Treaty, and afterwards voted the King's Conceſſions at the *Iſle of Wight* to be ſatisfactory;

ſatisfactory; and being for this alone driven out of the Houſe by *Cromwell*, and his *Independent* Faction, were call'd the excluded Members, and were the very Men, who being afterwards brought again into the Houſe by General *Monk*, join'd with him in voting for a Free Parliament, or Convention, which (you know) recall'd and reſtor'd the King and Royal Family.

M. I cannot deny, but you have given me a fair Account of theſe Tranſactions; yet methinks, according to your Principles, I can ſee no reaſon why the People might not have riſen up in Arms againſt the King in that long Interval of Parliaments, when he levied *Ship-Mony*, and (as you own) did ſo many illegal things, and that to force him whether he would or not, to call a Parliament, to redreſs thoſe Oppreſſions and Grievances the Nation then lay under: and yet you cannot ſhew me any Man in *England*, who had either the Will or Intereſt to raiſe a Rebellion againſt the King, during thoſe eleven Years that thoſe things were tranſacted; ſo well were the People ſatisfied with his Majeſty's Government, notwithſtanding all the ſecret Murmurings and Diſcontents of ſome leading and factious Men againſt his Proceedings. And therefore, when the *Scots* firſt invaded *England* upon the account of the New Service-Book, I cannot find but the major part of our Nobility and Gentry were well enough ſatisfied with the King's Proceedings, and ſerv'd him with great Courage and Fidelity at his firſt Expedition againſt the *Scots*.

F. If this be ſo, you your ſelf have given me a ſufficient Reaſon, why neither the People, nor any part of them, ought then to have taken up Arms againſt the King; for if the Major part were ſo well ſatisfied, as you make them to be, it was a ſign that the Oppreſſions were either not general, or elſe but very light, and eaſy to be borne; and therefore (no doubt) they ought to wait the King's time when he would call a Parliament, rather than involve the Nation in a bloody Civil War, which I never ſuppoſe lawful, but as the laſt and only Remedy, (as our Caſe lately was.) And beſides all this, you know very well, that *Ship-Mony* (which was the chiefeſt and moſt illegal of theſe Oppreſſions) was declar'd to be according to Law by all the Judges of *England* in the *Exchequer-Chamber*, except two, who I grant argued againſt it, with greater Law and Reaſon, than the Majority of them could produce on the other ſide, as appears by their Arguments, ſince printed in Dr. *Franklin*'s Annals: yet, however, ſo long as the Judges are look'd upon as the Interpreters and Declarers of what is Law in doubtful Caſes in the Intervals of Parliament; I told you at our laſt Meeting, that whatever is done under ſuch a Colour of Law, ſupported by their Determinations rightly given, ought not to be oppoſed or reſiſted by the Subjects, till their Judgment be revers'd and declar'd illegal by Parliament.

But indeed you are ſomewhat miſtaken in matter of Fact: for tho I admit that *Ship-Mony* was a very light Tax in compariſon of what we have felt ſince, and that moſt of thoſe Impriſonments you complain of, fell only upon ſome particular Gentlemen and Merchants, who refus'd to pay *Ship-Mony*, and *Tonnage* and *Poundage*; yet was the Nation very highly diſſatisfy'd for all that, when the *Scots* came in, eſpecially after the Parliament (in 1640.) was diſſolv'd, becauſe they would not agree to the King's demands, of *fifteen* intire Subſidies for the *Scotiſh* War: and tho 'tis true, the Nobility and Gentry attended the King in the firſt Expedition againſt the *Scots* with a ſeeming Alacrity, as they were by their Tenures bound to do, and that there was alſo a mercenary Army raiſed upon Pay; yet it is very plain, by the great unwillingneſs of the generality of the Soldiers, as well as Commanders, to fight againſt the *Scots*, as alſo by the Interceſſion of the major part of the *Engliſh* Lords for Peace, and the mighty Joy which appeared at the Pacification; I ſay, it is very plain upon theſe Conſiderations, that moſt of the *Engliſh* Nobility and Gentry were not well ſatisfied with that War, becauſe they very well knew, That when once the *Scots* were wholly ſubdued and brought under, the King might then take upon him to do even what he pleaſed with his *Engliſh* Subjects.

M. I ſhall not farther diſpute what you ſay concerning this matter; but deſire you only to conſider, That according to your own Argument, if the Opinion of the major part of the twelve Judges, in the Intervals of Parliament, be ſuch a Declaration of Law to the People (how illegal ſoever it might be in it ſelf) as they ought by no means to gainſay or reſiſt; then by a parity

of

of Reaſon, the taking up Arms by thoſe Noblemen and Gentlemen who joined with the Prince of *Orange* is not to be juſtified, ſeeing that the King had the Judgment of moſt of his twelve Judges on his ſide for diſpenſing with the Act concerning the Oaths and Teſt.

F. I own what you have now ſaid would have been cloſe and home to the Caſe, had this been ſo declared by their Judgments upon a ſolemn Argument of the point in the *Exchequer-Chamber*, as had been done in the Caſe of *Ship-Mony*: but it was ſo far otherwiſe in this, that you may very well remember the King would not permit the Judges ſo much as to argue the Caſe, or give their Opinions in publick, but only in private in *Serjeant's-Inn*, and that too after they had been cloſetted by my Lord Chancellor; and thoſe were turned out that would not be brought over to his Opinion, and ſuch put into their places as promiſed to comply. And beſides all this, the King's Declaration of Indulgence was not a Diſpenſation in one particular Caſe, or Act of Parliament alone, but an actual Suſpenſion of above forty Penal Statutes at once concerning Matters of Religion, which (as I have already proved) was as good as a downright Abrogation of them; and ſuch a Suſpenſion had been before declared unlawful in the Caſe of *Thomas* and *Sorril*, in the Lord Chief Juſtice *Vaughan*'s Reports, which I mentioned at our laſt Meeting. Now if you can ſhew me any thing like this done by King *Charles* the Firſt in the buſineſs of *Ship-Mony*, I grant your Objection to be good, otherwiſe not.

M. But pray give me leave to urge this matter a little farther concerning the Lawfulneſs of the War made by the Parliament againſt *Charles* the Firſt, in defence (as they pretended) of their Religion and Civil Liberties, againſt the King's Uſurpations upon both; for which they had a very ſpecious pretence, ſince the King had left the Parliament, not upon any direct or open Force or Compulſion, but only upon a bare Surmiſe, follow'd by a Declaration, that he thought he could not be ſafe any longer at *London*, for fear of the Tumults of the Rabble. Now when the Parliament had upon this declared, That his Majeſty's Departure and continuing from his Parliament, notwithſtanding their humble Petitions for his Return, was an Obſtruction to the Affairs of *Ireland*; and that thoſe who adviſed him to go away were Enemies to the Peace of the Kingdom, and juſtly ſuſpected to be Favourers of the *Iriſh* Rebellion: and farther, upon his going to *Hull*, and his hoſtile Preparations againſt that place, the two Houſes had in a Declaration, publiſhed for their Juſtification, that all that Sir *John Hotham* had acted in that Affair, had been done by their Order; and that the King's Proceedings were unſuitable to his Declarations of never having an intention to make war againſt the Parliament: And farther, upon his Majeſty's iſſuing out his Commiſſions of *Array*, they voted them contrary to Law, and againſt the Liberty and Property of the Subject; and that all thoſe that acted in putting thoſe Commiſſions in execution, were Diſturbers of the Peace of the Kingdom, *&c.* and farther declared it lawful to reſiſt by force of Arms all thoſe Noblemen and Gentlemen who had endeavour'd to put it in execution: And laſtly, his ſetting up his Standard at *Nottingham*, and marching with an Army towards *London*, was an evident Declaration of his actual beginning a War againſt them; whom then could the Nation better believe in this caſe, than their Repreſentatives in Parliament?

Ruſh. Hiſt. Collect. Par. 3. Vol. 1. p. 534.

Id. ib. p. 611.

Id. ib. 658.

Id. p. 766.

Ib. 787.

So that if you will ſuppoſe our preſent King *James* to have forfeited or abdicated the Kingdom, becauſe the Convention hath lately declared ſo, you ought then to quit your old Cavalier Principles, and to own the late War againſt King *Charles* the Firſt, being only defenſive on the Parliament-ſide, to have been juſt and lawful by like parity of Reaſon, as you ſaid; for ſurely a Declaration of both Houſes of Parliament, called by the King's Writ, ought to be looked upon as of much greater Authority than that of a Convention, who have met and acted without any legal Authority to call them together.

F. You have indeed played the part of a ſtout Advocate for the Presbyterian Party in the Long Parliament, which I know you urge againſt me only as *Argumentum ad hominem*, whereby you would prove me an Apoſtate from my former Principles; but I hope, for all that, ſo far to vindicate the late Proceedings of the Convention, as to ſhew that they have done, and declared nothing in their Vote or Declaration concerning King *James*, but what may very well be juſtified upon my old Cavalier Principles.

In order to which, pray take notice, first of all, that I lay down as a ground of what I have to say on this Subject, That the greatest part of the Nobility and Gentry, who took up Arms on the behalf of King *Charles* against the Long Parliament, never believed any absolute irresistible Power in the King, or those commissioned by him, if they acted against the known Laws of the Land; for this indeed is a new Doctrine, preached and set up since that time only to serve a turn. Secondly, That the Nobility, Gentry, and People of *England*, who understood any thing of the Grounds of this Quarrel between the King and the two Houses, by fighting on the King's side, and supporting his Cause, never intended thereby to make him an Arbitrary Monarch, and to give him a power over the Persons, Estates, and Liberties of the People of this Kingdom, but only (as his Majesty himself set forth in all his Declarations) to defend the King's just Rights, as also those of the Church of *England* established by Law; both which were then invaded by that Parliament. Thirdly, That no sober Man of the King's Party then did (any more than we do now) suppose the Judgment either of the whole, or major part of the Parliament, to be an infallible Rule of Law or Obedience, but only as far as it agreed with the antient and known Laws of the Kingdom: and hence it was that many Noblemen and Gentlemen, who were for the King, refused to yield Obedience to those commissioned by the Parliament, according to their Ordinance for settling the Militia. And therefore as they refused to own the Power of the Parliament when it was illegal, so I freely grant, that upon the same grounds both you and I, and any considering Man, have also the like Right to examine whether the late Votes and Declaration of the present Convention were according to the antient fundamental Constitution of the Kingdom, and the publick Good and Safety of the Commonwealth, or not; for otherwise all the Discourses that you and I have had upon this Subject are altogether in vain, and to no purpose.

M. But to urge this matter a little farther; tho it be lawful (upon your Principles) for the Parliament, when sitting, to be Judge of its own and the Peoples Danger of losing their Religion and Civil Liberties, and of the King's Encroachments upon them; yet when the King came to the House of Commons, to demand and seize the five Members, and had failed in the Undertaking, they were never after that satisfied with his ceasing farther Prosecution, but judging themselves and the Nation in imminent danger, as long as the King had any power to hurt them, they would not be satisfied unless the Militia of the Kingdom were wholly put into Commissioners of their own Nomination; especially when after the breaking out of the *Irish* Rebellion, &c. Sir *Phelim Oneale*, their General, pretended to shew the King's Commission for what they had done. So that (to argue on the same Principles) if the Nation were then in great danger, and that its Representative, the two Houses of Parliament, were the sole and proper Judges of this Danger, then upon the King's refusal to pass a Bill to settle the Militia out of his power into indifferent Hands, was certainly a Denial of granting all means necessary for the publick Peace and Safety of the Kingdom, and consequently the Parliament might upon the same grounds justify their raising an Army to force it.

F. I confess you have urged all that ever was, or can well be said in Justification of the beginning of that unhappy Civil War by the Long Parliament: yet give me leave to tell you, that I think it will not do the business; for whenever the King and Parliament differ about the Exercise of any part of the Supreme Power, such as is that of the Militia, that great Power of the Sword, which when there is any Dispute about it, or even when it is feared the King will abuse that Power to enslave the Nation, ought to reside in King and Parliament jointly; whereas it became then divided, both the King and the Parliament separately claiming their Right to it. But at this present *Revolution*, the King being gone away without leaving any Deputy or Vicegerent behind him, or calling a Parliament before his Departure, the Question now arises, Whether by his Departure his Right to govern be lost or not? And tho the present Convention have determined that it is, yet I must still own, that neither you nor I are obliged to stand to their Judgment any farther than former Precedents from History, and Declarations of Parliament, and Statutes shall incline us; for we must not blindly take the ordinary Books of

Reports

Reports (which are but the Opinions of private Judges) for Law in ſuch great Caſes: therefore ſince nothing but the Juſtice and Reaſon of the thing ought to determine us in theſe matters, I ſhall endeavour to examine them to the bottom.

Therefore the Parliament is not infallible, and always in the right, nor the King always in the wrong; ſince that may fall out either way, according as either of them, through an Exceſs of Ambition or Deſire of Power on one ſide, or too much Encroachment upon the Prerogative on the other, may give the firſt occaſion for a War. I ſhall now comply ſo far with you, as to grant, that the breaking out of the Rebellion in *Ireland*, and the Queen and thoſe of her Party ſo notoriouſly favouring the Papiſts, and Sir *Phelim Oneale*'s pretending to have the King's Commiſſion to raiſe Rebellion, and murder the Proteſtants in *Ireland*, together with the King's Attempt to ſeize the five Members, might then ſeem juſt Occaſions for the two Houſes of Parliament to deſire to have the Militia ſettled in ſome hands that they could confide in. Yet truly to determine whether the King or Parliament were in the wrong, he in denying, and they ſtill urging to have the Militia ſettled according to their own pleaſure, will give us occaſion to look back, and take a ſhort View of the moſt material Tranſactions of thoſe Times.

My next buſineſs therefore ſhall be to ſhew you what great things the King had done to ſatisfy the Parliament and the whole Nation, that he did not intend to govern arbitrarily, but to make a general Reformation of whatever had been amiſs in the former part of his Reign: for at the beginning of this Parliament, beſides the declaring of *Ship-Mony*, *Tonnage*, and *Poundage*, with ſeveral Monopolies, to be illegal, he paſſed a Bill for *Triennial* Parliaments; by which, in caſe of a failure of the iſſuing out of the King's Writs in due time, the Sheriffs were impower'd to iſſue out Precepts for the Choice of Members to ſerve in Parliament, who were required to meet accordingly. After this he paſſed that unparallel'd Act, which was indeed the main cauſe of all the Wars and Confuſions that followed; whereby, under the pretence of giving the Parliament credit to take up Moneys to pay off the *Scotiſh* and *Engliſh* Army, the King tied up his own hands from proroguing, adjourning, or diſſolving that Parliament without their own Conſents: by which Act the Supreme Power became divided, and the Parliament was made wholly independent on the King; which indeed produced a great Alteration in the very Conſtitution of the Government it ſelf. At the ſame time (tho with much difficulty) he paſſed the Bill of Attainder againſt his late chief Miniſter the Earl of *Strafford*, for certain Crimes and Miſdemeanors, which certainly were not High Treaſon at Common Law.

Then the better to ſatisfy his People, the King within leſs than two Months after paſſed two Acts for taking away the *Star-Chamber* and *High-Commiſſion Court*; and having done all theſe unparallel'd Acts of Grace, he adjourn'd the Parliament, and went into *Scotland*, in order to quiet the late Commotions of that Kingdom.

But to let you ſee that nothing leſs than the depriving of the King of his antient and undoubted Prerogative would ſerve the turns of an unquiet Faction, you muſt know, that during the King's abſence, this diſcontented Party in the Houſe of Commons took a freſh occaſion of aſperſing his Majeſty's Government, by contriving a Petition with a Declaration, called a *Remonſtrance* of the State of the Kingdom; which being brought into the Houſe of Commons at their re-ſitting after their late Adjournment, was paſſed by a very ſmall Majority of Votes, notwithſtanding Sir *Edward Deering*'s, and divers other worthy Members arguing and proteſting againſt it: ſo that the Debate laſting from three of the Clock in the Afternoon till ten the next Morning, it cauſed many of the Members, through Weakneſs or Wearineſs, to leave the Houſe before they came to a Vote; which made Sir *Benjamin Rudyard* compare it to *the forced Verdict of a ſtarved Jury*. This being preſented to the King, contained an invidious Repetition of all the paſt Miſcarriages and Grievances of his Reign, tho they had been all, or moſt of them, either long ſince over, or already redreſſed, and taken away either by particular Acts, or Votes of Parliament. This Declaration and the Petition, tho they were anſwered by another publiſhed by the King for that purpoſe, and written with great Strength of Rea-

Ruſh. ib. 437.

Whitl. Mem. p. 49.

Dugdale's *Short View*, &c. p. 78. *See the Answer at large.*

ſon; yet their Paper had ſo far obtained the end for which it was publiſhed, as to render his Government and Miniſters odious to a great many well-meaning People, who gave entire credit to whatever their Repreſentatives had ſet forth.

Ruſh. ib. p. 452.

But indeed all this tended towards their main end of getting the Militia into their own hands, ſince they knew when they had that, they could eaſily accompliſh whatever elſe they had a mind to; and for this purpoſe ſome of that Faction invented and ſpread abroad divers horrid Plots and Conſpiracies againſt the State, of which the Houſe of Commons had ſeveral falſe Informations, and ſeemed to give credit to them; as that a great multitude of Papiſts and other Malignants were about to riſe in Arms; alſo of great Forces to be ſent out of *France* and *Denmark* to aſſiſt the King to enſlave the Nation, and alter the Religion eſtabliſhed: of which Reports there was not a word true, as the People were afterwards convinced of, when it was too late.

Id. p. 76, 77.

Yet at preſent theſe Stories had ſo far wrought the effect for which they were raiſed, that divers Apprentices, and others of the meaner ſort of the City of *London*, coming down in great multitudes to *Whitehall* and *Weſtminſter*, petitioned againſt the Biſhops, and demanded them to be excluded the Houſe: which Clamours, with other ſaucy reflecting Language againſt the King, ſo far provoked him, that he thereupon iſſued out his Proclamation againſt ſuch tumultuous Aſſemblies, as contrary to Law; and at the ſame time, by the Advice of the Judges, he iſſued forth an Order to the Sheriffs of *Middleſex*, and Juſtices of Peace of *Weſtminſter*, for the ſetting of a Watch or a Guard about the Hall and Parliament-Houſe: at which, when it came to be put in execution, the Houſe of Commons took offence, and having examined the Conſtables and Under-Sheriffs that ſet the ſaid Watch, they voted it a Breach of Privilege to ſet Guards about their Houſe without their Conſent, and thereupon ſent their Serjeant to them to order their Diſcharge; and Mr. *Long*, a Juſtice of *Weſtminſter* who had ſigned the Warrant, was ſent to the Tower, as having exceeded the Authority given him by the Writ, in ſending down armed Men to the Parliament-Houſe, without acquainting them with the ſame. And yet, which was more ſtrange, a few days after they thought themſelves in ſuch danger of a *malignant Party* (as they called them) that they addreſſed to the King that they might have a Guard out of the City, to be commanded by the Earl of *Eſſex*; which Requeſt being deny'd, and civilly put off by his Majeſty as unneceſſary, they thereupon order'd Halberts to be provided and brought into the Houſe for their better Security: But the truth was, the Faction looked upon themſelves in no danger from that Party of the Mob that cried out againſt the Biſhops, tho at the ſame time they inſulted both the King and the Lords that were not of their Party; whilſt the ſame Men pretended they were afraid of having their Throats cut by certain malignant Officers of the late disbanded Army. But this was only a pretence in order to put the Nation into a poſture of Defence under confiding Perſons of their own Nomination, and to get the Militia, or whole Force of the Nation, into their own hands.

Id. p. 78. Ruſh. ib. p. 462. Id. p. 466. Id. ib. 456. Dugd. ib. Ruſh. ib. p. 471.

M. I think ſo far you are in the right; pray go on to ſhew by what means they obtained it.

F. I ſhall proceed to do ſo in as few words as is poſſible, for the true Relation of ſo many and ſo various Tranſactions, as quickly followed each other. When the King found that there was a malicious, prejudiced, and turbulent Party in both Houſes, who made it their buſineſs, inſtead of healing the Breaches between the King and them, to make them wider; and the Ring-Leaders of this Faction were the Lord *Kymbolton* in the Houſe of Peers, and in that of the Commons, Mr. *Hambden*, Mr. *Pym*, and three others whom I need not particularly name, and who were alſo believed by his Majeſty to have had a chief hand in exciting the *Scots* to take up Arms, and enter *England* as they had done: he thought fit by his Attorney-General to impeach thoſe Members at the Bar of both Houſes of High Treaſon, upon ſeven Articles then exhibited; and then for the better Proſecution of this Accuſation, he commanded their Chambers and Studies to be ſearched, and their Trunks with their Papers to be ſealed up. This was not only voted a high Breach of Privilege by the Houſe of Commons, but the Lords alſo thereupon order'd, that

Dugd. ib. p. 81. Ruſh. ib. p. 473, 474.

that they ſhould be forthwith open'd and deliver'd to their Owners. And when the King did by his Serjeant at Arms demand the ſaid Members to be taken into cuſtody, they were ſo far from complying with that Demand, that the Speaker, by the Order of the Houſe, commanded them to attend *de die in diem*, till the Houſe ſhould take farther order about it. So that tho Treaſon, Felony, and Breach of the Peace, have been at all times excepted out of the Privileges of Parliament, yet it ſeems the Law was otherwiſe with them, and they declared that none of their Members were to be ſeized on any account whatever, without the Leave and Conſent of the Houſe of Commons. Wherefore, when the King found he was not like to obtain any thing by his Impeachment, unleſs theſe Members could be firſt ſecured, he was by the Queen, or ſome others near about him, put upon a raſh and violent Action, which was to go in Perſon to the Houſe of Commons not only to demand, but ſeize the Perſons of the five Members; which, being attended with his Guard of Penſioners, and about two hundred other Courtiers and Gentlemen armed with Swords and Piſtols, he endeavour'd to perform: but when the King came into the Houſe of Commons, he found none of thoſe Members he looked for, for they having notice of his coming, were withdrawn before he could get thither. But as I do not juſtify the King's Proceedings, in going to the Houſe of Commons in Perſon to arreſt thoſe Members, ſince the King cannot in Perſon execute the Office of a Meſſenger, or other inferior Officer; for then there could be no Perſon left to whom the Subject might appeal: ſo thus much may be ſaid in his excuſe, that he did not take this Courſe till he found all other gentle Methods utterly deſperate.

Id. p. 476.

Whitl. ib. p. 50.

But to proceed: When upon the Votes of the Houſe of Commons, that this Action of the King's, in coming to the Houſe in a warlike manner to ſeize their Members, was a high Breach of Privilege; and when, upon the ſeveral Petitions from the City and divers Counties in their behalf, they were brought by a Rabble of Watermen, and other deſperate Fellows, as it were in triumph; then he found it in vain to proſecute his Impeachment againſt them any farther: and ſo he gave the Houſes of Lords and Commons notice, That he would for the preſent not only wave his former Proceedings, but, as a farther Teſtimony of his unfeigned Intentions towards his People for the better compoſing of this matter, and removing all their Fears and Jealouſies, he offer'd to grant ſuch a General Pardon to all his loving Subjects, as ſhould be thought convenient by both Houſes. But this was refuſed by the Commons, and nothing would ſerve to quiet their Minds: but being full of needleſs Fears and Jealouſies, put into their heads by falſe Reports, and feigned Letters of ſtrange Deſigns to ſeize on, and murder the Members of Parliament; they not only ordered a Guard for their own ſafety, conſiſting of the City Trained-Bands, under the Command of Colonel *Skippon*, but likewiſe ordered a Guard to be ſet upon the Tower, that ſo no Ammunition nor Proviſions ſhould be carried from thence without the Authority of Parliament: and alſo that Sir *John Hotham* ſhould take the Command of the Town of *Hull*, and ſecure (that is, ſeize) the King's Magazine of Arms there, and ſhould not deliver them without the King's Authority, ſignified to him by the two Houſes of Parliament: which was indeed to take away the Command of the King's Arms and Stores, bought with his own Mony, without any juſt cauſe ſhewn, except, as I ſaid before, their own cauſeleſs Jealouſies. But the better to diſcover the ſteps this Faction took to get the Militia of the Kingdom into their own hands, I ſhall now look back to what was done a little before this: When the City and Nation were put in a ſtrange Ferment by the above-mention'd falſe Reports, that ſame Party in the two Houſes excited underhand divers of the meaner ſort of the City of *London*, and County of *Middleſex*, as well as other Counties, to petition the Parliament, that all Papiſts ſhould be diſarmed, that all Biſhops and Popiſh Peers ſhould be excluded out of the Lords Houſe, and the Kingdom ſpeedily put in a poſture of Defence; and to this end, that the Militia ſhould be committed to ſuch hands as the Nation might moſt confide in. Now to quiet and ſatisfy the Houſe of Commons and City, whoſe Minds were ſtill much diſturbed about the buſineſs of the five Members, the King on the twentieth of *January* ſent the two Houſes of Parliament a moſt gracious Meſſage in writing; wherein he propoſed, "For the preventing the Diſtractions

Dugd. p. 82.

Ruſh. p. 488.

Ruſh. Hiſt. Col. Par. 3. Vol. 1. p. 469.

Id. ib. p. 496.

Vid. *A ſhort View of the Troubles*, &c. p. 85.

Ruſh. ib. p. 516.

"that

" that were now likely to enſue, that they ſhould fall into a ſerious Conſide-
" ration of ſuch Particulars as they ſhould judge neceſſary for the upholding
" and maintaining his Majeſty's juſt and regal Authority, the ſettling of his
" Revenue, and for the preſent and future Eſtabliſhment of their Privileges,
" the quiet and free Enjoyment of their Eſtates and Fortunes, the Liberties of
" their Perſons, the Security of the true Religion profeſſed by the Church of
" *England*, and appointing of Ceremonies in ſuch a manner as may take away
" all juſt Offence; which when they ſhall have compoſed and digeſted into one
" entire Body, that ſo his Majeſty and themſelves may be able to make the
" clearer Judgment of them, it ſhall then appear, by what his Majeſty ſhall
" do, how far he hath been from intending thoſe things which the great Fears
" of ſome Perſons ſeem to apprehend, and then how ready he ſhall be to ex-
" ceed the greateſt Examples of the moſt indulgent Princes: and it concludes,
" that if the preſent Diſtractions, which apparently threaten the Ruin of
" this Kingdom, do not end in a happy Accommodation, his Majeſty ſhall call
" Heaven and Earth to witneſs, that it hath not failed on his part."

To this reaſonable Propoſal, the Houſe of Commons alone return an Anſwer, by way of Petition, to this effect: " That to give them a ſure Ground
" of Safety and Confidence of what he would be pleaſed to do, he ſhould
" forthwith put the *Tower* of *London*, and other principal Ports, together
" with the whole Militia of the Kingdom, into the hands of ſuch Perſons as
" ſhould be recommended to him by the Petitioners," (*viz.* Houſe of Commons.) But the King being unwilling to part with thoſe Powers and Prerogatives, which his Predeceſſors from time immemorial conſtantly enjoyed, replied to this purpoſe, That he hoped his laſt gracious Meſſage to both Houſes would have produced a better effect. As to the *Tower* of *London*, his Majeſty did not expect, having preferred a * Perſon of known Fortune and unqueſtionable Reputation to that Truſt, that he ſhould be preſſed to remove him without any particular Charge laid againſt him; yet if upon due examination it ſhould appear, " That his Majeſty was miſtaken in his Opinion of
" this Gentleman, he would make no ſcruple to diſcharge him, which otherwiſe he ſhould be loth to do: That as for the Forts and Caſtles of the
" Kingdom, his Majeſty is reſolved they ſhall always be in the hands of ſuch
" Perſons as the Parliament may confide in; but the nomination of the Perſons to thoſe Places being a principal and inſeparable Prerogative of the
" Crown, derived from his Anceſtors by the fundamental Laws of the Kingdom, *&c.* he will reſerve to himſelf." And then proceeds, " That as for the
" Militia (which by Law is ſubject to no Command but that of his Majeſty, and of the Authority lawfully derived from him) when any particular Courſe for the ordering the ſame (which his Majeſty holds very neceſſary for the Peace and Security of his Kingdom) ſhall be propoſed to him,
" he will return ſuch an Anſwer as ſhall be agreeable to his Honour, and the
" Safety of his People; being reſolved only to deny thoſe things, the granting of which would alter the fundamental Laws, and endanger the very
" Foundation upon which the publick Happineſs and Welfare of his People
" is founded and conſtituted, and would nouriſh a greater and more deſtructive Jealouſy between the Crown and the Subject, than any of thoſe which
" ſeem to be taken away by ſuch a Satisfaction." And then further goes on,
" That he found his having granted more than any King ever had done before, encouraged his Houſe of Commons to ask more of him than ever Subjects had asked; yet, however, if they ſhall think fit to acquaint him with
" the particular Grounds of their Doubts and Fears, he will very willingly
" apply Remedies proportionable to thoſe Fears; for his Majeſty calls God
" to witneſs, That the Preſervation of the publick Peace, the Law and Liberty of the Subject, is, and ſhall always be, as much his Majeſty's Care and
" Induſtry, as his own Life, or the Lives of his deareſt Children." Then he concludes " with conjuring the Houſe of Commons by all the Acts of
" Favour they have received from him, as alſo by divers other Motives, that
" they would not be tranſported by Fears of impoſſible Dangers, to put
" themſelves or his Majeſty into real and preſent Inconveniences; but that
" they would ſpeedily purſue the way propoſed by his Majeſty's former Meſſage, which in human Reaſon is the only means to compoſe the Diſtractions

" of

* *Sir* John Byron.

" of the Kingdom, and with God's Bleſſing to reſtore a great meaſure of Fe-
" licity to King and People."

But the Faction in the Commons-Houſe was not at all ſatisfied with this reaſonable and moderate Anſwer, and not having as yet been able to procure the Houſe of Peers to conſent to join with them in their farther petitioning his Majeſty for the Militia, they deſiſted from returning him any Reply for ſome time, till they were again backed and encouraged by ſeveral Petitions from thoſe of their Party in the City, and divers Counties of *England*; and had by that, and ſeveral other Artifices, obtained a Majority in the Houſe of Peers, to join with them in another Petition for putting the Militia wholly out of his Majeſty's power. Dugdale's *ſhort View*, p. 85.

M. I ſhould be glad to underſtand by what means there was ſo ſudden and ſo great an Alteration wrought in ſo judicious and auguſt a Body, as that of the Houſe of Peers.

F. I ſhall comply with your Deſires, and to make you the better to underſtand it, you may pleaſe to take notice, That this could never have been brought about, had not ſeveral of that Great Council been clapt up in Priſon, and divers of the Popiſh and other Lords frightned from coming to the Houſe by the Tumults and Petitions of the Rabble. But as to the Biſhops, you may remember, that they having been ſeveral times not only menaced, but alſo violently aſſaulted by a rude multitude of Apprentices and other ordinary Fellows, that came down in great numbers, armed with Staves and other Weapons, under pretence of petitioning againſt the Biſhops and Popiſh Lords having their Votes in Parliament: the former thought it from thenceforth not ſafe for them to come any more to the Houſe, till the Cauſe of their juſt Fears were removed too. And twelve of the Biſhops (of whom the Archbiſhop of *York* was the chief) preſented a Petition and Proteſtation to the King and Houſe of Peers, ſetting forth their undoubted Right to ſit in Parliament, and demanding his Majeſty's Protection for the ſame, declared their Hatred to Popery; and that ſo long as they ſhall be thus menaced and aſſaulted, they cannot attend to perform their Services in the Houſe: and therefore proteſt againſt all Laws, Orders, and other Proceedings, that have or ſhall be paſſed in their Abſence. Ruſh. ut ſupra, *p.* 466.

This Petition being delivered by the ſaid Archbiſhop of *York*, and the other Biſhops; and the Houſe of Peers taking offence thereat, the Houſe of Commons laid hold on that advantage, ſo as thereupon to impeach all thoſe that had ſigned it of High Treaſon. And the Peers alſo too much reſenting it, they were by their Order not long after (all except two, who were committed to the Black Rod) ſent to the *Tower*, where they continued till ſuch time as the King had paſſed the Bill for diſabling them, and the reſt of the Biſhops, to ſit and vote in Parliament, and then they were diſcharged: For the Faction having obtained the end for which they had accuſed them, they were proſecuted no further, but were all ſet at liberty except the Archbiſhop of *Canterbury* and Biſhop of *Norwich*, who had been ſometime before committed upon another account; and the former of theſe continued cloſe Priſoner for near three years after, until he was beheaded, and the latter for near twenty years without ever being brought to Trial. But this by the by; only you may obſerve, that the reſt of the Biſhops and Lords, who looked upon themſelves as obnoxious to the Faction, either forbore coming to the Houſe at all, or elſe, if they came, durſt not oppoſe the Deſigns that were then ſo furiouſly driven on. Ib. *p.* 467.

Nor did the Party reſt contented yet, till they had ſtirred up and procured ſeveral factious Petitions from the City of *London*, and the Counties of *Eſſex*, *Hertford*, *Suffolk*, *Northampton*, *Kent*, *Oxford*, *Lincoln*, and *York*: ſome complaining of the Loſs and Deadneſs of Trade, and others that there was no Redreſs to be expected, unleſs the Biſhops and the Popiſh Lords were put out of the Houſe; whilſt others deſired that the Kingdom ſhould be put into a Poſture of War. And the Faction having laid ſuch a Foundation for the carrying on their Deſigns, by enſnaring the People with their own Petitions, which were delivered by many thouſands in Perſon; as alſo from ſeveral falſe Stories and Reports of dangerous Plots and Deſigns of the Papiſts in *Lancaſhire* and other Places, it ſtruck ſuch a Terror in the Lords that remained in Dugd. *p.* 85, 86, 87, 88.

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the Houſe, that upon Mr. *Hollis*'s again moving them at a Conference, *That their Lordſhips would now join with them, without any further delay, in petitioning his Majeſty, that the Kingdom ſhould be put into a Poſture of Defence:* I ſay, the Lords, who refuſed to join with them at firſt in their Petition of the 26th of *January*, were ſo far brought about, that the Majority of them at laſt conſented to it, being preſented to the King on the 2d of *February*, which was to this effect:

Ruſh. p. 518. "In the firſt place they ſet forth the preſent Evils and Calamities where-
" with his Majeſty's Kingdoms were moſt miſerably entangled, and the im-
" minent Dangers, which (as they pretended) threatned his Royal Perſon:
" and tho they ſeemed to receive his Majeſty's late Propoſition of the 20th
" of *January* with great Thankfulneſs, and would with Earneſtneſs of Af-
" fection endeavour to purſue the ſame; yet for the Safety of his Royal Per-
" ſon, preſerving the Honour and Authority of his Crown, and removing
" all Jealouſies betwixt his Majeſty and his People, ſuppreſſing the Rebellion
" in *Ireland*, preventing the Fears and Dangers in this Kingdom, and the miſ-
" chievous Deſigns of thoſe who were Enemies to the Peace of it; they ſtill
" inſiſted, That for the accompliſhing their Duties therein with more Com-
" fort and Security, his Majeſty would be pleaſed forthwith to put the *Tower*
" of *London*, and all other Forts, with the whole Militia of the Kingdom,
" into the hands of ſuch Perſons as ſhould be recommended unto his Majeſty
" by both Houſes of Parliament: and which they aſſure themſelves would be
" a hopeful Entrance into thoſe Courſes, which (thro God's Bleſſing) would be
" effectual for the removing all Diſſidence and Miſapprehenſions betwixt his
" Majeſty and his People, and (as they ſaid) for eſtabliſhing and enlarging
" the Honour and Greatneſs of his Royal Poſterity. And then conclude, that
" they expected his Majeſty's ſpeedy and gracious Anſwer, the great Diſtrac-
" tions and Diſtempers of the Kingdom not admitting any delay."

The King being much ſurprized to find the Houſe of Lords now brought over to the ſame Sentiments with the Commons, and that his late ſo reaſonable Propoſals to both Houſes had met with ſo unſutable a Return, ſeemed however not at all tranſported at it, but ſoon gave them a ſhort, but very

Id. p. 519. handſome and reaſonably Reply to this effect: "That having well conſidered
" their Petition, and being deſirous to expreſs how willing he was to apply ſu-
" table Remedies, not only to their Dangers, but even to their Doubts and
" Fears; he therefore returned an Anſwer, That when he ſhould know the
" Extent of the Power which was intended to be eſtabliſhed in thoſe Perſons,
" whom they deſired to be Commanders of the Militia in the ſeveral Coun-
" ties, and likewiſe to what time it ſhould be limited, that no Power ſhould
" be executed by his Majeſty alone, without the Advice of his Parliament;
" then he would declare, That (for the ſecuring them from all Dangers or
" Jealouſies) his Majeſty would be content to put into all Places, both of his
" Forts and Militia in the ſeveral Counties, ſuch Perſons as both the Houſes
" of Parliament ſhould either approve of, or recommend to him; ſo that they
" declare before to his Majeſty the Names of the Perſons whom they ſhould
" approve of or recommend, unleſs ſuch Perſons ſhould be named againſt
" whom he ſhould have juſt and unqueſtionable Exception."

Id. ib. But to return again to the matter of Fact: So ſoon as the Faction ſaw it ſelf thus backed and encouraged in the two Houſes, they then joined in an Ordinance to regulate the Militia of the City, which was the firſt Encroachment they made upon the King's Prerogative in this kind; and to ſecond this, they again petitioned the King for ſettling the Militia of the ſeveral Counties on ſuch as they had nominated, giving him at the ſame time a Liſt of the Names of thoſe whom they deſigned for Lords Lieutenants in the ſeveral Counties, being all of them of their own Party.

Ruſh. p. 820. The King reſpited his Anſwer till his Return from *Dover*, whither he had accompanied the Queen and his Daughter that were then going for *Holland*; and at the ſame time they preſented him with a Form of an Ordinance, whereby they would have ſettled the Militia of the Kingdom in the hands of thoſe Lords they had already nominated. But when the King demurred to grant it, they pretended to be ſo tranſported with Fears and Jealouſies, by certain feigned Reports of dangerous Plots deſigned by the Papiſts, to burn down di-

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vers of the chief Cities and Towns in the Kingdom, " That they thereupon Id. p. 521.
" diſpatched away another Petition to his Majeſty (ſtill at *Dover*) for ordering
" the Militia. To which *they deſired ſuch a ſpeedy Anſwer, as might raiſe in*
" *them a Confidence* (to uſe their own words) *that they ſhould not be expoſed to*
" *the Practices of thoſe, whoſe Endeavours were to kindle that Combuſtion in* Eng-
" land, *which they had in ſo great a meaſure effected in* Ireland, *and which no-*
" *thing could do* (as they ſaid) *but the granting that Petition.*"

His Majeſty's Anſwer thereunto was juſt and moderate, " That as for the Id. ib.
" City of *London*, and other Corporations, which by any antient Charters
" had power of ordering the Militia, he conceived it unfit to alter their Go-
" vernment, but that he could not conſent to the indefinite time propounded
" for this Poſture of Defence. On his Refuſal they voted this Anſwer to be Dugd. p. 88.
" unſatisfactory, and as good as a flat Denial, and that his Majeſty's Adviſers
" thereto were Enemies to the State, and miſchievous Projectors againſt the
" Defence of the Kingdom; alſo that this Denial was of ſuch dangerous con-
" ſequence, that it would hazard the Peace and Safety of all his Kingdoms,
" unleſs ſome ſpeedy Remedy were applied by the Parliament." And imme-
diately they ſent another Petition to his Majeſty (who was then at *Theobalds*)
wherein they proteſted, That if he did not ſpeedily paſs his Aſſent to the Satiſ-
faction of their Deſires, they ſhould be neceſſitated to diſpoſe thereof by Au-
thority of both Houſes, and that they did accordingly ſo reſolve to do.

And they farther voted, That the Kingdom ſhould be forthwith put into Id. p. 89.
a Poſture of Defence by the Authority of both Houſes, and that the Navy
ſhould be ſpeedily rigged under an Admiral of their own Nomination, and that
a Declaration of the Reaſons of their juſt Fears and Jealouſies ſhould be forth-
with drawn up; declaring the Grounds of their former Votes, for putting the
Kingdom into this Poſture by Authority of both Houſes, to ſecure them from
the future from all Miſtruſts and Jealouſies.

And to carry on this under colour of the Peoples Deſires, divers new Peti- Id. ib.
tions were daily brought up from ſeveral Counties; as one from *Staffordſhire*,
pretending ſuch Dread of Papiſts riſing there, that every Man was conſtrained
to ſtand upon his Guard, not daring to go to Church unarmed; others from
Worceſterſhire, *Berkſhire*, *Norfolk*; as alſo from *Norwich*, *Lynne*, *Salop*, &c. all
of them earneſtly deſiring this Poſture of Defence.

So that the Faction being highly encouraged by theſe Petitions, the Ordi- Id. p. 89.
nance for ordering the Militia of the Kingdom by Authority of both Houſes,
was the very next day aſſented to by the Lords; and thereupon new Lieute-
nants were by them nominated throughout all *England* and *Wales*, without his
Majeſty's Conſent.

And having in a grand Committee, ſitting at Merchant-Taylors-Hall, con-
trived the Declaration (mentioned in their Votes of *March* 2.) wherein they
made a very great noiſe of a Deſign to alter the Religion in this Kingdom,
and that the Wars with *Scotland* and *Ireland* were framed to that end; they Ruſh. p. 523.
preſented the ſame to his Majeſty, firſt at *Theobalds*, and then again at *New-
market* within a few days after: which being then denied, they voted the
King's Commiſſions of Lieutenancies in the ſeveral Counties to be illegal, tho
they had not been altered ſince this Diſpute; as alſo that there was an urgent
and inevitable neceſſity for putting his Majeſty's Subjects into a Poſture of De-
fence, and that the Ordinances of both Houſes for the Militia, being obliging
to the People, ought to be obeyed by the fundamental Laws of this Kingdom:
And, laſtly, That the Earl of *Warwick* ſhould be appointed Vice-Admiral of
his Majeſty's Ships, tho he did by no means approve of him.

M. But pray, Sir, tell me what were the Motives that perſuaded his Maje-
ſty to leave *London*, and travel Northward, at a time when the grand Affairs
of the Nation rather required his Preſence with his Parliament, to compoſe
the Differences that were now begun between them?

F. To do this, it will be requiſite to look back a little, and give you a
more exact Relation of theſe Tranſactions: That his Majeſty ſome time before
thinking his Perſon in danger, and his Authority expoſed by theſe exorbitant
Courſes, as alſo by the frequent Tumults and Affronts from the Mob (as has
been already related) did not think it ſafe to return any more to *London* after
his going down to *Dover* with the Queen; but coming no farther than *Green-*

wich, he ſent for the Prince and Duke of *York* from *Hampton-Court* to meet him there; and during his ſhort ſtay at that Place, he ſent the two Houſes his Anſwer to their Petition concerning the Militia, ſhewing the Inconveniences and Breach of his Right to have it ſettled as they deſired. From whence he went to *Theobalds*, where he received that bold Petition of the two Houſes abovementioned; and being removed from thence to *Newmarket*, on the 9th of *March* the Earls of *Pembroke* and *Holland* were ſent thither to him, with that yet more bare-faced Declaration of the two Houſes already mentioned; ſetting forth the King's Miſgovernment and unjuſtifiable Actions (as they called them) and in which they ripped up all that could be thought of to miſrepreſent his Perſon and Government, being to this effect:

Whitl. *p.* 54. Ruſh. ib.

1. By attempting to incenſe the late *Northern* Army againſt the Parliament, *Jermin*'s treaſonable Actions, and Tranſportation by the King's Warrant.

2. The Petition delivered to Captain *Leg* by the King's own hand, and ſigned *C. R.*

3. The Buſineſs of the Lord *Kimbolton* and the five Members, the ſuſpicious Deſign of a Guard about the King's Perſon, the underhand promoting the *Iriſh* Rebellion.

4. The ordering of Sir *John Pennington* to land the Lord *Digby*, thereby to alienate the King from his Parliament, and to procure foreign Aſſiſtance to the King. This appeared more credible, by his Removal from *London* with the Prince, and the many Advertiſements from *Rome*, *Venice*, *Paris*, and other Parts, of great foreign Aid to be given to the King, in reference to ſome grand Deſign againſt the Proteſtant Religion and the Parliament; tho (as it proved by the Event) there was no ſuch thing ever deſigned or tranſacted abroad.

Id. ib. Then they deſire the King to put away his wicked Counſellors, and to put his Truſt in the Parliament; which if he would do, they would ſacrifice their Lives, Fortunes, and utmoſt Endeavours to the Supportation of his Sovereignty.

The Lords, that then attended his Majeſty with this Petition, moved him to come nearer to the Parliament, but it was refuſed. And when they further urged, that the Militia might be granted, as was deſired by the Parliament, for a time; his Majeſty replied with an Oath, *No, not for an hour:* ſo jealous was he of that great and important Power of the Sword, which no wiſe Prince can or ought altogether to truſt out of his own hands. Then he told them in ſhort, that as their Fears, Doubts, and Jealouſies were ſuch, as he muſt take time to ſatisfy the whole World to be needleſs; ſo his own were not trivial, occaſioned by ſo many ſcandalous Pamphlets, ſeditious Sermons, and ſundry publick Tumults, hitherto unenquired into, and unpuniſhed.

Then a few days after, ſo ſoon as his Majeſty came to *Huntingdon*, he publiſhed a Declaration, for further Anſwer to theirs, to this effect:

1. That he had no evil Counſellors about him, but leaves ſuch to their Cenſure where they ſhould find them.

2. That he wiſhed the Judgment of Heaven might be manifeſted upon thoſe who had any Deſigns againſt the Proteſtant Religion; and as to the *Scotiſh* Diſturbances, they were already ſilenced by the late Act of Oblivion.

3. That the charging him with any Inclinations to the *Iriſh* Rebellion, was a high and cauſleſs Injury.

4. That he never intended to exaſperate the late Army, or to uſe them againſt the Parliament.

5. That he ſigned Captain *Leg*'s Petition only to ſatisfy the Army, and Sir *Jacob Aſhley* was of his Opinion as to the Reaſonableneſs of it.

6. That *Digby* and *Jermin* were not at *Whitehall*, nor had any Warrant from him after their Reſtraint.

7. That he had given ſufficient Anſwers about *Kimbolton* and the five Members, enough to ſatisfy any reaſonable and unprejudiced Perſons.

8. That the care of his own Safety cauſed him to raiſe a Guard at *Whitehall*, and to receive the Tender of the Service of the Gentlemen of the Inns of Court; and that he looked upon thoſe foreign Advertiſements to the Parliament as falſe, idle, and incredible Stories.

Whilſt

Whilſt the King continued at *Huntington*, he ſent a Meſſage to the two Houſes, *March* 15. that he intended to make his Reſidence for ſome time at *York*, and deſired them to haſten their Succours for *Ireland*; and not upon any pretence of an Ordinance, to which his Conſent was not given, (as by Law it ought) to act againſt Law, which he himſelf was to obſerve, and his Subjects to obey.

Notwithſtanding which, the Parliament voted their Ordinance for the Defence of the Kingdom, not at all prejudicial to the Oath of Allegiance, but to be obeyed, as being agreeable to the fundamental Laws; and the King's Commands for the Lieutenancy over the reſpective Counties, to be illegal and void: which was indeed a downright forcible diſſeizing and ouſting of his Majeſty of his juſt Right and Prerogative in the Militia of the Kingdom, and neceſſary Defence of it, as well as his own Perſon and Authority. Whitlock's *Memoirs*, p. 56.

M. I cannot deny but that you have given a fair account of all the conſiderable Tranſactions relating to this great Affair of the Militia, which was the chief Ground of that unhappy Quarrel between the King and the two Houſes: yet give me leave to urge what I have heard ſeveral well-meaning Perſons to obſerve concerning his Majeſty's leaving *London*, and going to *York*; that it was a great wonder to all prudent Men that the King ſhould leave the capital City, the Place of his and his Predeceſſors uſual Reſidence, where moſt of his Friends and Servants were about him, the Magazine of all Proviſions both for War and Peace, the Seat of Intelligence and Supplies; and betake himſelf to the Country, where theſe things were ſcarce to be had: and by his leaving the Town, bring great Troubles and Diſadvantages upon himſelf and his Affairs, unleſs he had fully reſolved, before ever he had left the Town, to have begun a War againſt the two Houſes.

And whereas you alledg that his Majeſty could not be ſafe at *Whitehall*, by reaſon of the Tumults and Inſults of the Mob; I pray tell me why he might not have ſecured himſelf ſufficiently againſt them, either by continuing at *Hampton-Court*, or elſe by removing to *Windſor*; which, beſides the diſtance from *London*, is a Place of that competent Strength, that he might have continued ſafe enough there againſt any Attempts, except a formal Siege, tho the Citizens and Apprentices ſhould preſume to come down thither to petition him with Arms in their hands. And admit they had made any Aſſault upon the Place, they could have done him no prejudice; ſince at the worſt, beſides his own ordinary Guards, he might have ordered the *Poſſe Comitatus* of the adjacent Counties to come in, and ſuppreſs thoſe tumultuous Forces. But inſtead of this, the King went away to *York*; and tho the two Houſes, as well before he went, as after his Arrival there, often petitioned him to return to them, yet he ſtill refuſed to do it: and ſo the War began (as they ſaid) by his raiſing a Guard of the Gentry and People of that County, for the Security of his Perſon, and going to ſeize the Ammunition at *Hull*, when no Army was as yet raiſed againſt him.

F. I confeſs what you now urge does carry a conſiderable ſhew of Reaſon with it, and was much argued *Pro* and *Con* by the Politicians of thoſe times; but if we may give the King the liberty (as every Man elſe ought to have) of judging of the Greatneſs of his own Danger, and ſince (as you your ſelf confeſs) he could not be ſafe at *Whitehall*, by reaſon of the Tumults of the Rabble, it might have been as hazardous for him to have ſtay'd any where elſe ſo near the Town. For ſuppoſe the City-Rabble had come down with Arms in their hands to *Hampton-Court* and *Windſor*, to petition him to grant the two Houſes the Command of the Militia, or any thing elſe they had a mind to, the *Poſſe Comitatus*, you mention, would I doubt have ſtood the King in little or no ſtead, and have hardly ſuppreſſed them; ſince the common People of moſt of the adjacent Counties had (as appeared by their late Petitions) been as much poiſoned and prepoſſeſſed againſt the King, as the People of *London*: So that he might have been aſſaulted and impriſoned, nay taken in his own Houſe, and the Parliament might (for ought I know) have taken their parts that did it, and declared, that they were not to be kept out, or denied thoſe Petitions, which the two Houſes had voted to be according to Law, as well as they had done before, when, after a great Concourſe of the Rabble coming down to *Weſtminſter*, they cried out no Biſhops, and gave ſaucy Language to the King himſelf:

ſelf: Therefore for the better prevention of any more ſuch dangerous Tumults and Uproars ſo near his own Palace, and the two Houſes of Parliament, he had directed his ſpecial Writ unto the Sheriffs of *London* to place a Guard at *Weſtminſter*. But the Houſe of Commons preſently voted it to be a Breach of their Privileges, and an Offence of an high nature; and thereupon not only ordered the ſaid Watch to be diſcharged, but queſtioned and committed the Juſtices for ſetting it, as hath been already related. Now what can be a more expreſs Proof, that the prevailing Faction in the Houſe of Commons were ſo far from ſuppreſſing, that they rather encouraged thoſe Tumults, and thereby not only took away the Liberty and Safety of both Houſes of Parliament, but alſo rendred it unſafe for the King's Perſon to remain in his own Palace?

But as for his Majeſty's going down to *York*, and his farther Proceedings after he came thither, I ſhall, for his clearer Juſtification, give you a ſhort account of them. As to the Buſineſs of *Hull*, and the King's taking a Guard at *York* for the Security of his Perſon, there will be, I hope, little need to doubt, whether the King might not very well juſtify his Actions at that time, and in ſo dangerous a Conjuncture: for he now plainly ſaw that the Parliament had already endeavoured to get the Militia of the Kingdom both by Sea and Land into their own hands, whereby they might, whenever they pleaſed, compel him to do what they had a mind to; it was ſure then high time (if ever) to prevent them from ſeizing all the Magazines of the Kingdom, and to ſecure ſomewhat whereby he might be able to manage a defenſive War, in caſe they ſhould proceed to extort the whole Power of the Militia by force. Therefore ſince thoſe Arms in *Hull* were his own proper Goods, being bought long ſince for the War againſt the *Scots*, he might, I think, diſpoſe of them to any uſe he pleaſed, unleſs it were to make war upon his People, which he always utterly diſavowed and declared againſt. And therefore for Sir *John Hotham* to preſume to ſhut the King out of his own Town, tho he offered to enter it but with twenty Horſe, was certainly an Act of downright Rebellion; for he might as well have ſhut him out of any other, nay all the Towns of *England* as that: ſo that this Act alone could be no Declaration of his Intention to make war againſt the Parliament, eſpecially after Sir *John Hotham* had alſo ſummoned the Trained Bands of the adjacent Country to come in to his aſſiſtance; beſides thoſe Forces that he had already brought with him from *London*, before the King had done any hoſtile Act upon that Place: All which was as plain and open Declaration of War againſt the King as any could be, unleſs he had actually diſcharged the Cannon on the Town-Walls againſt his Majeſty. Therefore upon theſe Proceedings the King might be very well juſtified, if he alſo raiſed all the Militia of *Yorkſhire* to reduce that Place to his Obedience: For if the Parliament by their own Authority could keep the King out of his own Town by force, they might as well have appeared in Arms againſt him in the open Field, as they did not long after.

M. But I ſuppoſe you are ſenſible enough what they inſiſted on in their Juſtification of this Action, *viz.* That tho Sir *John Hotham* did firſt keep the King out of *Hull* by their Order; yet this (ſaid they) was only done to prevent his beginning the War upon them, which they were very well ſatisfied he deſigned when he went into the *North*. And this (they ſay) was evident by ſeveral of his Actions: For elſe to what purpoſe did he ſend the Queen into *Holland*, with the Princeſs her Daughter, together with the rich and antient Jewels of his Crown, and divers Pictures of great Value, which were there pawned or ſold outright, and the Mony laid out to buy Arms and Ammunition, which ſhe brought over with her not long after, when ſhe landed at *Burlington-Bay* in *Yorkſhire*? Or to what end elſe did the King leave his Parliament and go to *York*, and there, under the colour of a Guard for the Security of his Royal Perſon, raiſe Forces, which in a little time after increaſed to an Army? And admitting it to be true, that the Parliament firſt iſſued out Commiſſions for raiſing of Men, and muſtering the Militia for their Service; yet it was not till the King had endeavoured to enter *Hull*, to ſeize the Arms that were laid up in that Place, and alſo till there had been divers Bickerings and Skirmiſhes in ſeveral Counties between the Militia that had been muſtered and commanded by the King's Commiſſioners of Array, and the like People that were headed by thoſe who were ſent by the Parliament to muſter and diſci-

Ruſh. p. 655. Vid. *May's Hiſtory*, &c.

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pline them; ſo that what the Parliament did, they looked upon as done in their own Defence. And had they ſtaid till he had actually raiſed an Army to have marched up to *London*, the King might then have ſurprized them, quite unprovided for their own Defence; ſo that they could have made no conſiderable Reſiſtance, for the Safety and Preſervation of the Parliament, and conſequently of the Liberties of the Nation. And if this had been, as they themſelves ſet forth, it puts a much better colour upon their Cauſe and ſubſequent Actions; ſince that makes it only a defenſive War againſt the King, which is juſtifiable enough upon your own Principles.

F. I will not deny but that when the Queen, and her Daughter the Princeſs, went over into *Holland*, with the Jewels and Pictures you mention, it might be done with an intent to pawn them for Mony, in caſe a War could not be avoided; but that there was none then deſigned by the King that Summer, appears plainly enough by the Queen's not coming over with theſe Arms till the Year following: ſince otherwiſe ſhe went early enough in the Spring to have bought thoſe Arms, and ſent them over to the King, or returned her ſelf with them the ſame Year. And as for your other Objection, That the King deſigned a War by his going into the North, and there raiſing a Guard, and endeavouring to ſeize the Town of *Hull*, it was the violent Proceedings of the Parliament that forced him to that Reſolution; for beſides that he did not think himſelf ſafe any where near *London*, where the Militia of that City was commanded by its own Officers, regulated by the Parliament, they might, under the pretence of removing evil Counſellors, not only have ſeized them, but his own Perſon likewiſe. And when upon his firſt Departure from *London* to *Theobalds*, they ſo earneſtly preſſed him to ſettle the Militia of the Kingdom by Act of Parliament, in the hands of Commiſſioners of their own appointing; what was it but to tell him in plain Terms, that the Forces thereof were no longer to be truſted in his power? For after he had ſo openly attempted to ſeize their Members, they no longer now looked upon him as their Friend, and ſcarcely as their King, any more than in Title; becauſe when once they were poſſeſſed of the Sword, that main Prerogative of the Crown, they knew that he and all thoſe that adhered to him, were abſolutely in their power: and therefore he had very good reaſon to tell the Commiſſioners, whom the Parliament had ſent to him to *Theobalds* for his Aſſent to the Bill for the Militia, *That he would never truſt that Power wholly out of his own hands, no not for an hour.*

M. I ſhall not inſiſt farther as to this point; but pray give me the reſt of this Year's Tranſactions.

F. With all my heart, and I will do it as briefly as I can; but muſt firſt farther inform you, That a little before this, the King himſelf offer'd a very good Expedient to compoſe this Diſpute, by a Bill for the Settlement of the Militia for a certain time; wherein he was content to name but one half of the Lords Lieutenants and other Officers, and ſo leave the reſt to the Nomination of the Parliament. But neither would this ſatisfy them, unleſs they had the ſole Power of it ſettled in Commiſſioners of their own Nomination, and that without any time limited; and to that end they refuſed the Bill the King had offered, and drew up another (that I laſt mention'd) by which they put that great Truſt wholly in certain Lords and Gentlemen, whom they look'd upon to be entirely in their Intereſts, quite excluding the King from having any more to do with it, than if he had been a Duke of *Venice:* and the unreaſonable urging of this Bill proved that Rock of Offence, on which the common Peace of the Nation was not long after ſplit. Whitl. Mem. *p.* 55.

M. But pray tell me, What did the King after he came to *York?*

F. I ſhall obſerve your Directions. You may remember, that after he had been denied entrance into *Hull* (which has been taken notice of by your ſelf) he proclaimed *Hotham* a Traitor, and ſo returned to *York*, and from thence ſent to the Parliament to have exemplary Juſtice againſt him, and that the Town, together with the Magazine, ſhould be deliver'd to him; but they were ſo far from complying with his reaſonable Demand (tho he ſent more than once about it) that after ſome Meſſages which paſſed between the King and them, they iſſued out a Declaration, wherein they juſtified Sir *John Hotham*'s late Action, and ſet forth the King's Deſign upon *Hull* as an Infringement of Whitl. ib. Ruſh. *p.* 567.

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the Liberties of the Subject, and a Breach of the Law of the Land (tho how, or wherein, had been a hard matter to ſhew;) and then they ſent certain of their own Members down thither for the better ſecuring of the Town. *Hotham* being thus backed by the Parliament, preſently ſent out Warrants in his own Name to ſummon the Trained-Bands of the adjacent Country to march in with their Arms for the Defence of that Place; which being obey'd by ſeveral of them, he then pretended he had no preſent occaſion for them: and ſo having diſarmed them, turned them home again.

Dugd. *p.* 94. Ruſh. *p.* 526. A little before this, the two Houſes not only paſſed their Ordinance for the Militia, againſt his Majeſty's Conſent, and without letting him have any ſhare in the Diſpoſal of it; but alſo to reinforce it, iſſued out a ſtrict Order, requiring all Perſons, ſo authorized by themſelves, immediately to put that Order in execution: which was done, notwithſtanding the King's Declaration to the contrary; wherein he ſet forth, that it was illegal, and commanded them not to obey it, ſince the two Houſes had no lawful Authority to make any ſuch Ordinance without his Conſent. But this Declaration found no Obedience, for the Parliament-Commiſſioners had already muſter'd it, and exerciſed the Train'd-Bands in ſeveral Towns and Counties where they were able to do it; of the Succeſs of which you ſhall hear farther by and by.

Id. *p.* 535.

Dugd. *p.* 92. Whereupon the King having hitherto had no Guards, but his Gentlemen Penſioners and his ordinary Yeomen, and knowing the Parliament had ſome time before raiſed a Guard for their own Security, he therefore iſſued out his Letters of Summons to the Gentry of *Yorkſhire* to attend him at *York*; who coming to him accordingly, he then acquainted them with the late illegal Proceedings of the Parliament; and that he looked upon his Perſon to be no longer in ſafety without a greater Guard, and therefore deſired their Aſſiſtance for that purpoſe: and this being cheerfully complied with by moſt there preſent, they returned home to raiſe the Forces he told them were neceſſary for his preſent Service. And not many days after he farther ſignified to them by his Letters, that he ſhould take it kindly if they would attend him ſo armed and provided as they ſhould think fit, for he apprehended himſelf in ſome danger.

Ruſh. ib. *p.* 622, 624.

This was readily obey'd, and many of them came in to him purſuant to his Summons. At this the Faction of the two Houſes were ſo highly alarmed, that thereupon they immediately voted, that what the King had done at *York*, in raiſing of a Guard, was a Preparation for a War againſt them, and a Breach of the Truſt repoſed in him by his People contrary to his Oath, and tending to the Diſſolution of the Government; and that all ſuch as ſerved him therein, were Traitors to the Laws of the Kingdom.

Whitl. *p.* 57. Col. 1. Dugd. *p.* 93.

Now by what Law they could judge it ſo, I am yet to ſeek, it being expreſly declared by the Statute of the 7th of *Edward* the Firſt, *That it belongs to the King alone to* * *prohibit Force of Arms, and all other Force, when it ſhall pleaſe him, and to puniſh Offenders which ſhall do contrary to Law; and herein every Subject is to be aiding and aſſiſting.*

* *The* French *Word is* Defendre.

But to return to the matter in hand: Immediately after this the Faction at *Weſtminſter* publiſhed another Declaration in the name of both Houſes of Parliament, "forbidding all Men to attend his Majeſty at his pleaſure, except "ſuch as were bound thereto by ſpecial Service; and that if the Trained-"Bands, or any other his Majeſty's Subjects, ſhould upon any ſuch Command "be drawn out in a warlike manner, they ſhould be eſteemed as Diſturbers "of the publick Peace:" wherefore the Sheriff of each County was thereby ordered forthwith to raiſe the Power thereof to ſuppreſs the ſame, and to keep his Majeſty's Peace according to Law.

Dugd. *p.* 93. And having already voted, that the Magazines of each reſpective County in *England* and *Wales* ſhould be preſently put into the power of ſuch Lords Lieutenants, *&c.* as the Parliament moſt confided in: They alſo publiſhed another Declaration, "highly reflecting on his Majeſty's late gracious Meſſages, "Anſwers, and Declarations, taxing him with Breach of his Word and Promiſes; as alſo with continued Oppreſſions and Violations of the Laws, and "with an intent to bring up his Northern Army to awe the Parliament."

Id. ib. And having ſo done, they voted farther the next day, "That the King "(ſeduced by wicked Counſel) deſigned to make war againſt his Parliament; which

" which *(as they pretended)* in all their Conſultations and Actions, propoſed no " other end unto themſelves but the Care of his Kingdom, and the Perform- " ance of all Duty and Loyalty to his Perſon."

Nor was this all, but at the ſame time they made as great Preparations for a War, as if it had been againſt a foreign Enemy.

Having managed their point thus far, they go on, and ſet forth another larger Remonſtrance in Juſtification of all their Proceedings; in which they had this bold Expreſſion, *That now they had brought their Work to ſuch an height and degree of Succeſs, that nothing ſeemed to be left in their way able to hinder the full Accompliſhment of their Deſires, unleſs God in his Juſtice ſhould ſend a grievous Curſe upon them.* Dugd. Hiſt. *p.* 93.

Then within three days after they ſent a Petition to the King, in the Name of both Houſes, which was deliver'd to him at *York*; wherein they boldly blamed him for the Breach of his many fair Promiſes and Pretences, and deſired him to disband his Guard, it being a cauſe of great Jealouſy and Danger to the whole Kingdom: otherwiſe they told him, That they ſhould employ their Care and utmoſt Power to ſecure themſelves and future Parliaments, and to preſerve the Peace and Quiet of the Realm. And ſhortly after they publiſhed a third Remonſtrance, ſtill juſtifying their former Actions, and farther blaming him for every thing he had done, and challenging the Obligations of his Oath (upon that equivocal Conſtruction of *quas Vulgus elegerit*) to paſs all Bills which they ſhould tender unto him. About this time alſo they removed the Magazine from *Hull* to the Tower of *London*; and farther voted, That whoſoever ſhould lend or bring any Mony into this Kingdom upon the King's Jewels, *&c.* ſhould be adjudged an Enemy to the State. Id. *p.* 94.

M. But had they not a plauſible Defence to make for this, if they were ſatisfied that the King had raiſed this Guard not only upon pretence to ſecure his Perſon, but indeed to ſeize *Hull*, with the Magazine of Arms there, in order to make war againſt the Parliament? And were not the Crown-Jewels now ready to be pawn'd by the Queen in *Holland*, to buy Arms and Ammunition for the ſame purpoſe?

F. I can eaſily take off this Objection; for ſure it was high time for his Majeſty to provide for his own Safety, when the Parliament had ſome time before began to borrow all the Mony and Plate they could upon the *Publick Faith*, as they then called it: And in this the Citizens of *London* ſhewed themſelves ſo zealous, that they not only brought in great Quantities of Plate, but their Wives deliver'd up their Caudle-Cups, Thimbles, and Bodkins, to maintain the *good old Cauſe*; which their Preachers ſo highly encouraged, that they denounced all thoſe, who refuſed to contribute to it, accurſed from God, cunningly applying that Text to their preſent purpoſe, *Curſe ye* Meroz, *&c.* I ſuppoſe you know well enough what follows, without my repeating it. Judg. 5. 23.

And farther, as to his Majeſty's Guard, was it not as lawful and neceſſary for him to have one, as the Parliament, who had raiſed one (as they pretended) for their own Security ſeveral Months before? But indeed the prevailing Faction in the two Houſes repreſented every thing they did themſelves as very juſt and lawful; but as if they had been the ſole and ſupreme Power of the Nation, they declared the ſame thing, when done by the King, as illegal and arbitrary: for he (poor Gentleman) was wholly to ſubmit to their dictates, and lie at their mercy; as appears about this time, by their ſeizing of *Portſmouth*, and all other ſtrong places near *London*, into their hands, together with the Royal Navy, and then paſſing that ſtrange Vote above-mention'd, upon his Majeſty's raiſing but one Regiment of Foot, and a few Horſe, for his own Security.

M. But pray, Sir, tell me what effect theſe violent Proceedings then wrought upon the Minds of the chief of the Nobility and Gentry of the Kingdom.

F. I thank you for minding me of it; and I muſt now take notice, that not long after his Majeſty's coming to *York*, and continuing there, many of the chief Nobility, as likewiſe of the Members of the Houſe of Commons, with other Gentlemen of Note and Eſtates, being ſatisfied in their Conſciences of the Juſtice of his Cauſe, from his Majeſty's Declarations, and the whole Progreſs indeed of Affairs, reſorted to him at that City; and the Lord Keeper *Littleton* himſelf, tho at firſt he ſeemed inclinable to the Parliament in the buſineſs

of

of the Militia, yet now, having deliver'd the Great Seal to one whom the King had ſent for it, he preſently after followed it himſelf, and then had it recommitted to him; and his coming in at that time very much conduced to his Majeſty's Service, as being a Man of great Courage, Parts, and Learning. Not long after his Arrival, upon his Majeſty's Declaration that he would not require any Obedience from ſuch as attended him, but what was warranted by the known Laws of the Land; and that he would defend the Proteſtant Religion eſtabliſhed by Law, the Liberties of the Subject, and Privileges of Parliament, againſt which he would not engage them in any War, unleſs it were for his own neceſſary Defence: Thereupon the Lord Keeper, together with the Duke of *Richmond*, the Marquiſs of *Hertford*, and divers other Earls and Lords, to the number of above forty, ſubſcribed in Writing a Promiſe, whereby they engaged themſelves not to obey any Orders or Commands whatſoever, not warrantable by the known Laws of the Land; and farther, engaged to defend his Majeſty's Perſon, Crown and Dignity, together with his juſt and legal Prerogatives, againſt all Perſons and Power whatſoever: as alſo to defend the true Proteſtant Religion, eſtabliſhed by the Law of the Land, the legal Liberties of the Subjects of *England*, and juſt Privileges of his Majeſty, and both his Houſes of Parliament. And laſtly, they engaged themſelves not to obey any Rule, Order, or Ordinance whatſoever, concerning the Militia, that had not the Royal Aſſent. This was dated the 13th of *June* 1642.

M. Theſe were indeed very fair Proteſtations from Perſons of ſo great Worth and Honour; but pray what effect had theſe Proceedings upon the two Houſes at *Weſtminſter*?

Dugd. *p.* 95. *F.* Why, juſt none at all; for I cannot but alſo obſerve, that a few days before this the two Houſes, being fluſhed with their Succeſs, and confident of their own Power, ſent down to the King certain Propoſals for a Peace and Agreement, which were called the *Nineteen Propoſitions*; by which they not only demanded the whole Power of the Militia, but alſo in effect the whole Regal Authority into their hands: unto which he ſoon after returned a full and clear Anſwer by the Marquiſs of *Hertford* and Earl of *Southampton*.

Ruſh. *p.* 551. To ſecond theſe Propoſitions, within four days after they ſet forth another bold Declaration againſt his Proclamation of the 27th of *May*, whereby he had forbid all Obedience to the Parliament's Ordinances for the Militia: now (in oppoſition thereto) they declared it to be void in Law, requiring all Officers to muſter, raiſe, march, and exerciſe according to their late Ordinance, aſſuring them, for ſo doing, of Protection from both Houſes of Parliament.

Dugd. *p.* 96, 97. Whitl. *p.* 57. And within few days after this, they ſent out an Order, in the name likewiſe of both Houſes, with freſh Propoſals for the bringing in of Mony and Plate; as alſo for providing Horſes, Horſemen, and Arms, in purſuance of their "late ſolemn Vow and Proteſtation, for ſuppreſſing the traiterous Attempts (as they called them) of thoſe wicked and malignant Counſellors, "who ſought to engage the King in the War againſt his Parliament; and "likewiſe with Inſtructions for the Deputy-Lieutenants to proceed therein, "themſelves firſt making Subſcriptions accordingly that very day:" And about the ſame time they ſent down divers of the moſt active Members to execute their Ordinance for the Militia, in the Counties of *Leiceſter*, *Lincoln*, *Eſſex*, *Kent*, &c. who infuſed into the People ſtrange Apprehenſions of very great Dangers, that ſo they might be the better prepared to take up Arms in their defence (as they pretended.) After this they borrowed Mony, Plate, and other things, of the Inhabitants of the City of *London* on the Publick Faith, for the buying of Arms, and raiſing of Men, under a pretence of a Guard for both Houſes; notwithſtanding the King had ſent a Letter to the Lord Mayor, Aldermen, and Sheriffs of *London*, forbidding to give or lend any Monies, or provide any Horſes or Arms; ſince it was only out of Malice given out, that he deſigned to make war upon the Parliament.

This I the more particularly take notice of, for you to obſerve how the two Houſes were providing all things ready for a War themſelves, whilſt the King had as yet neither Men, Mony, nor Ammunition, and was hitherto attended with no more than his ordinary Retinue: So that all the effect his Majeſty's Letter produced, was only an Order, in the name of both Houſes, That the Deputy-Lieutenants throughout the Kingdom ſhould tender Propoſitions to the

ſeveral

ſeveral Counties, for raiſing of Horſe for the Service of the King and Parliament: and ſoon after that, a Declaration of both Houſes was iſſued out, whereby they juſtified their raiſing of Forces, alledging them to be for maintenance of the Proteſtant Religion, the King's Authority and Perſon, the free Courſe of Juſtice, the Laws of the Land, Privilege of Parliament, *&c.* forbidding any Officers whatſoever to ſpread that Paper, (for ſo they ſtiled his Majeſty's Letter) juſtifying their former Votes, that the King intended to levy War againſt his Parliament; intimating that neither his Majeſty's Commands nor Threats could withdraw or deter ſuch as were well affected to the Publick, from contributing their Mony, Horſes, and Plate.

M. But pray, Sir, what effect had theſe Declarations?

F. I'll tell you as faſt as I can: in ſhort, they fully anſwer'd their Expectations; for (having thus deluded the People) large Proportions were daily brought in, and the County of *Eſſex* alone contributed twenty ſeven thouſand Pounds and upwards, and eight hundred Horſe; *Hertfordſhire*, eight thouſand Pounds, and three hundred Horſe, *&c.* as appears by the Calculation thereof, made upon the 20th of *Auguſt* enſuing. The King therefore, taking theſe their violent Practices into Conſideration, and that they had ſet up Lieutenants and Deputy-Lieutenants in all Counties, declaring his Commiſſions of Lieutenancy illegal; upon mature Deliberation and Advice (about this time) he iſſued out his Commiſſions of *Array* into all parts of the Realm; which Courſe had been antiently uſed by his Royal Progenitors, for prevention of Invaſions, or ſuppreſſing of any Inſurrections, and approved by divers antient Statutes. And thereupon he ſet forth a Proclamation, informing all his loving Subjects of the Lawfulneſs and Uſe of them, commanding their Obedience thereunto; which Commiſſions, the Lord *Strange*, Son to the Earl of *Derby*, in *Lancaſhire* and *Cheſhire*, the Earl of *Huntington*, and Mr. *Henry Haſtings* his Son, (afterwards Lord *Loughborough*) in *Leiceſterſhire*, with others in thoſe Counties, to whom they were directed, did firſt put in execution, but not without great oppoſition from the Commiſſioners of the Militia appointed by the late Ordinance of both Houſes, as you will hear farther by and by.

Dugd. *p.* 97.

Ruſh. *p.* 680.

But hereupon the Members at *Weſtminſter* publiſhed a large Declaration, in the name of both Houſes, repreſenting thoſe Commiſſions of *Array* to be contrary to the Laws of the Land, deſtructive to the Liberty and Property of the Subject; yea (if they might be believed) ſo full of Danger and Inconvenience, that it would bring a heavier Yoke of Bondage upon them, than any that had been taken away by this Parliament. Their factious Emiſſaries were in the mean while employ'd in ſundry parts of the Realm, to perſuade the People that thoſe Commiſſions were to reduce the Eſtates of all the Yeomanry of *England* to ten Pounds *per annum*, and to enſlave them beyond all expreſſion: and leſt thoſe, who were thus ſeduced by theſe their ſubtle Illuſions, ſhould receive any ſatisfaction from his Majeſty's gracious Declarations, whereby the Uprightneſs of his Actions, and Candour of his Intentions, might any ways appear, they ſent out Orders, ſtrictly forbidding the publiſhing of them, promiſing Protection from the Parliament to thoſe who ſhould refuſe ſo to do.

Ruſh. *p.* 661, ad 667.

But to make ſhort of the reſt of this Narrative of matter of fact; after both Houſes had ſet out two other long and ſpecious Declarations, wherein they pretended their whole Endeavours to be for his Majeſty's Honour and Safety, the regaining the antient Laws, Rights, and Liberties of the Kingdom, which had been ſo much invaded, the ſettling the Proteſtant Religion in Peace and Purity, *&c.* they at the ſame time tax'd the King with an Endeavour of a Change both in Religion and Government, as alſo with Breach of ſolemn Proteſtations; and that he had already begun a War againſt them, being ſeduced by Popiſh Counſels, and a malignant Party, who had deſign'd nothing but Slavery and Confuſion: and that this gave them a juſt occaſion to raiſe Forces for the Defence of Religion and the Laws of the Land. To which, tho his Majeſty publiſhed full and rational Anſwers, yet the Party at *Weſtminſter* and the adjacent Counties were ſo prepoſſeſſed with Prejudice, that they had little or no effect.

Ruſh. *p.* 691, 757.

M. But what was the Iſſue of theſe Declarations?

F. Why, from Skirmiſhes in Paper, they proceeded by degrees to real Hoſtilities; for ſo ſoon as the Parliament had prevailed upon a great many Perſons

of the City of *London*, and eighty Miles about it, to bring in their Mony, Plate, and Horſes upon the publick Faith (as they called it) they began therewith to buy Ammunition, and to raiſe Men, tho they were not formed into an Army till ſome time after.

Id. *p.* 680, 684, 685. In the mean while the War was in a manner begun by divers petty Conflicts in ſeveral Counties, between the Commiſſioners whom the Parliament had order'd to muſter and command the Militia, and thoſe other Commiſſioners, who acted for the ſame purpoſe by virtue of the King's Commiſſions of *Array*, grounded on the Statute of the 5th of *Henry* the Fourth; which being by both Houſes voted illegal, and againſt the Liberty of the Subject, thereupon happen'd many petty Engagements in ſeveral Counties between the Trained-Bands in thoſe places, which were divided into two different Parties, of the King, and the Parliament, ſome of the Nobility and Gentry ſiding with the one, and ſome with the other, according to their different Intereſts and Principles: as particularly in *Lancaſhire*, where the Lord *Strange*, Son to the Earl of *Derby*, having raiſed great part of the Militia of *Lancaſhire*, with an intent to ſeize *Mancheſter* for the King's Service, was repulſed by Sir *Tho. Stanley*, and others, with the loſs of one Man on the Parliament's ſide, which is ſuppoſed to be the firſt Blood that was ſhed in this unhappy Quarrel; and not long after the like Conteſts happen'd in *Oxfordſhire*, *Dorſetſhire*, and *Warwickſhire*, and that with various Succeſs, and the loſs of ſome Men on either part.

May's Hiſt. *p.* 109.

M. But you have not yet told me what the King hath been doing at *Hull* all this while, which ſeems to have been the main buſineſs of this Summer.

F. I ſhall tell you as faſt as I can; but I could not do it till I had given you an account of the Succeſs of this great Affair of the Militia. Sir *John Hotham* having now provided his Gariſon of *Hull* with Men and Ammunition, the King about the middle of *July* reſolved to beſiege that place; and having raiſed a ſmall Army of about three thouſand Foot, and a thouſand Horſe, out of the Militia of *Yorkſhire*, marched againſt the Town, tho but with ill Succeſs; for ſo ſoon as the Governour heard of their Approach, he immediately pulled up the Sluices, and laid all the low Grounds about the Town under Water: ſo that all that could be afterwards done, was to block it up, and reduce it by Famine.

May, *p.* 92, 93.

But the Gariſon in *Hull* would not let it go ſo far, but boldly ſallying out to the number of about five hundred Men, under the Command of Sir *John Meldrum*, they beat off the King's Forces, which conſiſting chiefly of the Country Trained-Bands, preſently ran away; and the Horſe being thus deſerted by the Foot, quickly followed them towards *Beverly*: but upon the retiring of the Parliament-Party, the Siege was again renewed, but was ſome time after quite raiſed. When the Governour had received freſh Supplies from *London*, Sir *John Meldrum* made another Sally, and killing about twenty Men, and taking about as many more Priſoners, and ſetting fire to the King's Magazine of Gunpower and other Ammunition, it ſo diſcouraged him, that by the Advice of a Council of War, he reſolved to raiſe the Siege, and retire again to *York*; and ſo the Summer paſſed, till the King, by a Reinforcement of his Army, ſet up his Standard at *Nottingham*.

M. But I forgot to aſk you what became of the Fleet all this time; and how it came to paſs that the King made no uſe of it to ſtrengthen and block up the Town of *Hull* by Sea?

F. I thank you for putting me in mind of this, and I will give you an eaſy Anſwer to it. In ſhort, the Parliament had now made themſelves maſters of almoſt the whole Royal Navy, and putting out Sir *John Pennington*, Admiral for the King, gave the Earl of *Warwick* the chief Command of it; who undertook it, notwithſtanding the King's Commands to the contrary; and immediately ſailing out with a ſtrong Squadron of Men of War, eaſily reduced all ſuch Ships, whoſe Captains refuſed to obey his Orders: and in the *Downs* they ſeized upon a Man of War, then bound for *Newcaſtle* for his Majeſty's Service, together with a ſmall Veſſel laden with Gunpowder; which, as it proved a great addition of Strength to the Parliament, ſo it was a great weakning and diſappointment to the King's Intereſt.

M. This

M. This Action of my Lord of *Warwick* was indeed very bold and violent, and ſuitable to the Character of that Nobleman, who afterwards proved one of the greateſt Enemies the King had. But pray, Sir, proceed.

F. Matters being arrived to this height between the King and the two Houſes, they did not long continue in this uncertain State; but after a tedious Debate in the Houſe of Commons, notwithſtanding the Oppoſition of divers moderate Men of their own Party, it was at laſt voted on the 12th of *July*, and afterwards agreed to by the Lords, "That an Army ſhould be raiſed forthwith "(as they pretended) for the Safety of the King's Perſon, the Defence of both "Houſes of Parliament, and of thoſe who had obey'd their Orders and Com-"mands; and for preſerving of the true Religion, the Laws, Liberty, and "Peace of the Kingdom:" And then they alſo voted, That the Earl of *Eſſex* ſhould be General of it, with whom they declared they would live and die. All that in their Votes ſhewed of any Moderation, was, That they then alſo voted a Petition to be ſent to his Majeſty, to move him to a good accord with his Parliament, and to prevent a Civil War; but it was only to this effect, That he ſhould diſmiſs his Forces from about *Hull*, *Newcaſtle*, and other places, and recal his Commiſſions of *Array*, and return nearer to his Parliament, and hearken to their Advice: And that they would then ceaſe thoſe Preparations they had made for their Defence, and would put the Town of *Hull* in the ſame condition as it was before Sir *John Hotham* brought his Forces into it. But as for their Ordinance for the Militia, they inſiſted to have it ſettled by a Bill, in ſuch a way as ſhould be honourable and ſafe for his Majeſty, moſt agreeable to the Parliament, and effectual for the Good of the Kingdom; which ſignified no more in general Terms than to tell the King, that the Militia ſhould be ſettled as they pleaſed themſelves. This was not to be done neither, unleſs the King would leave all Delinquents (that is, all thoſe who had obey'd his Orders) wholly to their Juſtice, or rather Diſcretion.

Whitl. *p.* 58. Ruſh. *p.* 753, &c.

Ruſh. *p.* 601.

But his Majeſty having diſpatched the day before, being the 11th of *July*, a Meſſage to them, upon his ſending Forces to *Hull*, requiring that Place to be deliver'd to him, together with his Proclamation; wherein he ſet forth how ill Sir *John Hotham* had dealt with him by divers Hoſtilities committed in and from the ſaid Town; and of the Ships under the Command of the Earl of *Warwick*, keeping that Port and Paſſage by Sea to it, in order to ſeize ſuch Ships as were employ'd in his Service: he ſummons all his good Subjects in general to come into his Aſſiſtance, for the reducing it to his Obedience; and concludes with a Proteſtation, That he would continue to defend the true Proteſtant Religion, as it is by Law eſtabliſhed in the Church of *England*, the Laws of the Land, the Rights and juſt Liberties of his Subjects, equally to and with his own juſt Prerogative; and other things, needleſs here to be repeated.

But before the receipt of this Meſſage, the two Houſes having already prepared the above-mention'd Petition, they reſolved to return no other Anſwer to it than the Petition it ſelf; to which, being deliver'd by the Earl of *Holland*, Sir *John Holland*, and Sir *Philip Stapleton*, the King immediately after returned a very reaſonable and ſolid Anſwer; wherein he bids them remember, That (which all the world knows) his Majeſty was driven from his Palace of *Whitehall* for the Safety of his Life, and that not till both Houſes of Parliament, upon their own Authority, raiſed a Guard to themſelves (having gotten the Command of all the Trained-Bands of *London* for that purpoſe) without the leaſt colour or ſhadow of Danger; That they uſurped a Power by their pretended Ordinance (againſt all Principles of Law) over the whole Militia of the Kingdom, without, and againſt his Majeſty's Conſent; That they took poſſeſſion of his Town, Fort, and Magazine of *Hull*, and committed the ſame to Sir *John Hotham*, who had ſhut the Gates againſt his Majeſty, and by force of Arms deny'd Entrance thither to his Perſon; That they juſtify'd this Act, and took Sir *John Hotham* into their Protection for whatſoever he had done or ſhould do againſt him: And all this while his Majeſty had no other Attendants than his own menial Servants.

Id. *p.* 603.

Id. *p.* 605.

That as for his Forces, he ſhould not diſmiſs them till *Hull* was again reduc'd to his Obedience; and as for the Commiſſions of *Array*, he inſiſted that they were legal, and which he promiſes to prove ſo by a Declaration to be ſhortly

publiſh'd. As to his coming nearer to his Parliament, he ſaid, he hath expreſs'd himſelf ſo fully as to his ſeveral Meſſages, Anſwers, and Declarations, and ſo particularly avow'd a real Fear of his Safety, upon ſuch Inſtances as cannot be anſwer'd, that he hath reaſon to take himſelf to be ſomewhat neglected. He ſays, he is alſo ſorry, that ſince upon ſuch manifeſt Reaſons it is not ſafe for his Majeſty to come to them, both his Houſes will not come nearer to his Majeſty, or to ſuch a place where the Freedom and Dignity of Parliament might be preſerv'd. And as for the Tumults that had driven him from *London*, he ſhould be glad to hear of ſome Examples of the puniſhing the Authors of them; which he knows not how to expect, ſince the Houſe of Commons had already declar'd, that they knew not of any ſuch Tumults, tho the Peers had deſired, both for the Dignity and Freedom of Parliament, that the Houſe of Commons would join with them in a Declaration againſt them, which they refuſed: and notwithſtanding the Complaints that he himſelf had made of things of that nature, yet they had neglected to enquire out the Authors of divers ſeditious Actions, Speeches, and Writings. Then he proceeds, That as for the leaving Delinquents to the due Courſe of Juſtice, his Majeſty is well aſſured he hath given no ſhelter to any ſuch: But if by Delinquents, ſuch are underſtood, who refuſe to ſubmit to the pretended Ordinance of the Militia, and that of the Navy, or to any other which his Majeſty hath not conſented to, or thoſe who had publiſhed his Proclamations, or had read his Meſſages and Declarations, (as divers Miniſters about *London* and elſewhere had done) or ſuch as had lent his Majeſty Mony in the Univerſities, or any other places; his Majeſty declares to all the World, That he will protect all ſuch with his utmoſt Power and Strength, it being no leſs his Duty to protect thoſe who are innocent, than to bring the guilty to condign Puniſhment; of both which the Law is to be Judge. And then concludes with ſhewing, that much greater Delinquents act on their ſide; yet agrees that all Delinquents ſhall be proceeded againſt according to the known and unqueſtionable Rules of the Law.

Having ſaid thus much of the Particulars of their Petition, he then proceeds to complain, that ſince the ſending thereof they had beaten their Drums for Soldiers againſt him, armed their own General with a Power deſtructive to the Law and Liberty of the Subject, and choſen a General of their Horſe; That Sir *John Hotham*, beſides his burning and drowning the Country, had ſeized his Wine and other Proviſions for his Houſe; and therefore demands, That the Town of *Hull*, with its Magazines, be forthwith deliver'd into the hands of ſuch as he ſhall appoint; That his Navy be forthwith deliver'd into ſuch hands as he hath directed for the Government thereof; the detaining of it, after his Majeſty's Directions publiſh'd and receiv'd to the contrary, and employing his Ships againſt him in ſuch manner as they are now uſed, being notorious High Treaſon in the Commanders of thoſe Ships: And then concludes with a Demand, That all Arms, Levies, and Proviſions for a War, made by Order of both Houſes (by whoſe Example his Majeſty hath been forced to make ſome Preparations) be immediately laid down, and the pretended Ordinance for the Militia, and all Power of impoſing Laws upon the Subject, without his Majeſty's Conſent, be diſavowed; without which the ſame Pretence will remain to produce the ſame Miſchiefs.

Theſe things being done, and the Parliament adjourn'd to a ſafe and ſecure place, his Majeſty promiſes in the Preſence of God, and binds himſelf in all Confidence and Aſſurance on the Affections of his People, that then he will inſtantly and moſt chearfully lay down all the Forces he hath raiſed, and diſcharge all his future and intended Levies, that there may be a general face of Peace over the whole Kingdom; and then he will repair to them, and deſires all Differences may be freely debated in a Parliamentary way, whereby the Law may recover its due Reverence, the Subject his juſt Liberty, and Parliaments themſelves their full Vigour and Eſtimation; and ſo the whole Kingdom a bleſſed Peace, Quiet, and Proſperity.

And if theſe Propoſitions ſhould be rejected, his Majeſty doubts not of the Protection and Aſſiſtance of Almighty God, and the ready Concurrence of his good Subjects, who can have no hope left them of enjoying their own long, if their King muſt be oppreſs'd and ſpoil'd, and muſt be remedileſs: And tho his Towns, his Ships, his Arms, and his Mony be gotten and taken from him,

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he hath a good Cauſe left, and the Hearts of his faithful People, which, with God's Bleſſing, he doubts not will recover all the reſt. And then his Majeſty concludes, That he expects a full and poſitive Anſwer by Wedneſday the 27th of this Inſtant *July*; till then he would not make any Attempt of Force upon *Hull*, hoping in the Affection, Duty, and Loyalty of the Petitioners; and that in the mean time no Supply of Men be put into *Hull*, or any of his Majeſty's Goods taken from thence.

M. Theſe Offers appear very fair and reaſonable; but what Return did the two Houſes make to them?

F. I'll tell you preſently: To this Anſwer the Lords and Commons a few days after ſent the King a Replication by the Earl of *Holland*; the effect of which was, to let him know that they could not agree to his Majeſty's Demands for the Delivery of *Hull*, and the Magazine, together with the Navy, or the recalling the Ordinance of the Militia; the laying down of all Arms raiſed by Authority of the two Houſes of Parliament, and adjourning themſelves to ſome other place: becauſe the reaſon wherefore they took the Town of *Hull*, with the Magazine and Navy, into their cuſtody; and why they paſſed the Ordinance of the Militia, and made Preparations of Arms; was only for the Security of Religion, the Safety of his Majeſty's Perſon, Kingdom, and Parliament: all which they did ſee in evident and imminent Danger. From which, when they ſhall be ſecured, and the Forces of the Kingdom ſhall not be uſed for the Deſtruction thereof, they ſhall then be ready to withdraw the Gariſon of *Hull*, to deliver the Magazine and Navy, and ſettle the Militia by Bill in ſuch a way as ſhall be honourable and ſafe for his Majeſty, moſt agreeable to the Duty of Parliament, and effectual for the Good of the Kingdom, as they have profeſſed in their late Petition. And for adjourning the Parliament, they apprehend no reaſon for his Majeſty to require it, nor Security for themſelves to conſent to it: And then conclude, That his Majeſty need not fear returning to *London*, conſidering the Loyalty and Fidelity of that City to his Majeſty. And as for laying down of Arms, they excuſe it, till the Cauſes that had moved them to take them up ſhall be removed; and then they ſay, when this is done, they ſhall be willing to forbear making any farther Preparations, *&c.* But of all this they make themſelves the ſole Judges.

But I cannot here omit, that tho both the King and Parliament commanded theſe their Declarations, Meſſages, and Petitions to be printed and publiſhed, and alſo to be read in Churches; yet the latter either miſtruſting the Juſtneſs of their Cauſe, or fearing leſt the People ſhould receive any due Information concerning the Juſtneſs of the King's Cauſe, and the Sincerity of his Intentions, ſtraitly forbid any Miniſters or other Officers from reading or publiſhing any Declarations, Meſſages, or Anſwers ſent them by the King; and thoſe that refuſed to obey, were committed to Priſon: as in particular they dealt with Sir *Richard Gurney*, Lord Mayor of *London*, who for publiſhing the King's Commiſſion of *Array*, was not only depoſed from his Office, but alſo committed to the Tower, where he lay a long time.

I have given you the more particular Account of this Petition, and the King's Anſwer, with their Replication thereto, that you may the better obſerve how things ſtood between the King and the two Houſes, and who were moſt in the fault, that they could by no means come to a better Underſtanding. I ſhall therefore now proceed further to ſhew you how they daily grew into greater Acts of Hoſtility, till it came to that height as engaged the whole Nation in a Civil War, which ended in the Ruin of the Royal Party, the Murder of the King, and the enſlaving of the whole Nation.

M. But pray, Sir, before you go on farther, tell me whether, according to your and their Principles, the Parliament had not a fair colour for what they did; for who, ſaid they, can or ought to judge when the Kingdom is in danger, or that the King goes about to deſtroy the Liberties of the People, and to make War upon the Parliament, but themſelves, the Repreſentatives of the Nation, and *ſole Judges and Interpreters of what is Law?* Now when they had thus ſolemnly declared their own ſincere Intentions, that they did not deſign to begin any War againſt the King, but only to take him from his evil Counſellors, and therefore ſtill earneſtly beſeeched him to return again to his Parliament at *London*; and he refuſed to do it, but ſtaid in the North, providing Arms, and raiſing

raiſing Men for his Guard; why ſhould it be ſuppoſed that this was for any other end than to make war upon the Parliament?

F. I grant that this was the Effect, and indeed chief, if not only Reaſon, in all their Declarations and Remonſtrances, why the Nation ſhould put full Truſt and Confidence in whatever they ſaid; yet the King did not fail in his Meſſages to them, as alſo in his printed Declarations, in anſwer to whatever could be urged upon this Head, to ſet forth, that the Parliament were not the ſole Judges and Interpreters of the Law without himſelf: for upon that ground (unleſs the two Houſes ſhould be ſuppoſed infallible, and not capable of judging or acting any thing amiſs) they might engroſs all the Power of the Kingdom to themſelves, and ſo leave him the empty Title and bare Name of a King, as they had in effect done by their Ordinance concerning the Militia; over which they aſſerted, that he had no more Authority but as it was declared, and iſſued by and from themſelves. Now granting it to be according to their own Allegation, that the King was one of the three Eſtates of the Kingdom (whereas he is indeed the Head of the whole Body Politick) yet even upon this Suppoſition they could not, nor ought to judge and declare what was Law without him. For ſuppoſing him to be but equal with them, it is a known Maxim among Equals, that *Par in parem nullam habet poteſtatem*, and that in diſtinct Perſons and Powers each of them muſt be endued with an independent Right to act and judge for themſelves: Therefore ſince they had made the King's ſtay in or near *London* unſafe for him, by the Tumults raiſed and fomented by the Faction in both Houſes, could any but himſelf judge when his Perſon was in danger, and what were the beſt means for his own Security? If therefore they thought it convenient ſeveral months before to have a Guard aſſigned them for their Defence againſt a malignant Party, might not the King have a like Right to a Guard for his Defence, againſt thoſe that had now got all his Fleet and naval Stores, with his Magazines of Arms in the *Tower* and at *Hull*, into their own hands, whether he would or not? And had by thus violently invading his Prerogative without his Conſent, not only put themſelves into a Poſture of War, but indeed actually begun it, by the Commiſſions they had iſſued out for muſtering the Militia of the Kingdom, before the King's Commiſſions of Array were actually put in execution for the ſame purpoſe; but eſpecially after they had avowed and juſtified *Hotham*'s ſhutting him out of *Hull*, and thereby treated the King as if he had been a publick Enemy to the Nation?

To conclude: If they had their Fears and Jealouſies of his Proceedings, why might they not be mutual, and he likewiſe have the ſame of theirs? For when once Men ceaſe treating each other like Equals, by Reaſon and Perſuaſion, and come to Force, they are then diſcharged of all Civil Obligations, and in that ſtate it is lawful, *vim vi repellere*, to repel Force by Force. Therefore ſince neither the King nor Parliament could agree upon theſe Points, and that neither of them were infallible, all they could do was to appeal to the People which ſide they would take and adhere to: tho as their Condition was very unhappy, whilſt they knew not which of theſe contending Powers to follow or obey, yet certainly thoſe that took part with the King had the Law on their ſide; ſince by the Statute of the 11th of *Henry* VII. none can be called in queſtion for aſſiſting the King in his Wars againſt his Enemies, whether foreign or domeſtick.

M. But pray, Sir, tell me then why you have not hitherto called the two Houſes, and all that aſſiſted them, downright Rebels and Traitors, as certainly they were (according to our old Church-of-*England* Principles) notwithſtanding they were at firſt choſen for the Repreſentatives of the Nation? And if the Cavaliers had (as you ſay) the Law on their ſide, then the other Party acting againſt Law, muſt deſerve that Title by your own ſhewing.

F. I do not at preſent concern my ſelf with what they were indeed, but ſhall decline giving them or their Adherents thoſe hard Names of Rebels and Traitors, for ſeveral Reaſons: As firſt, Becauſe I am now to declare my ſelf directly of no Party, but to ſhew wherein the King and Parliament were both to blame, as certainly they were, as well in the beginning, as carrying on of that unhappy Civil War. And in the next place, I forbear calling them plain Rebels, becauſe the King having made the two Houſes, by his own Act, not

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ſubject to any Diſſolution or Prorogation, otherwiſe than by their own Conſent, had ſo far made them independent upon himſelf, and had given them thereby a Power of looking into and cenſuring his Actions, whether he would or not; eſpecially ſince they put ſuch a ſpecious Gloſs upon all they did, that it was hard for many well-meaning and prudent Men of the Long Robe among them to believe their Party in the wrong, but that they acted in defence of the Proteſtant Religion, and the Liberties and Privileges of the Nation, with an Acknowledgment of a Submiſſion to the King's Authority, as far as they thought it according to Law. I ſhall not call them direct Traitors for what they at firſt did, till the Independent Party in the Houſe of Commons having got the aſcendant of the Presbyterians, and alſo beaten the King in the Field, and had his Perſon delivered to them by the *Scots*, not only kept him in Priſon, but voted no more Addreſſes ſhould be made to him, and took the whole Power both Civil and Military into their own hands; and from that Period of Time I ſhall not ſtick to call them Traitors: Since no Man can juſtify the impriſoning of the King, without committing Treaſon, by the Act of the 25th of *Edward* III. wherein I find no Exception, whether it be done by one or both of the Houſes of Parliament, or by any other Perſons whatſoever; ſince they are all the King's Subjects, as well in their politick as private Capacities.

I ſhall now return from whence I have digreſſed, and proceed with the Narrative of what remains of this unhappy Civil War, till the Murder of the King. The Parliament having raiſed a powerful Army under the Command of the Earl of *Eſſex* (as you have already heard) the King thereupon iſſued a Proclamation, whereby that Earl and all his Adherents were declared Traitors, yet with Pardon to ſuch as ſhould return to their Obedience within ſix days. But this gracious Offer was ſo much contemned, that ſo ſoon as it came to their notice, the two Houſes publiſhed a Declaration in their Names, containing many ſhameful Invectives againſt his Majeſty, declaring all ſuch to be Traitors that were Contrivers or Countenancers of this laſt Proclamation of *Auguſt* 9. and that if his Majeſty would diſband his Forces, abandon thoſe wicked Counſellors, and hearken to the wholeſome Advice of his Great Council, they would endeavour then to make him and his Poſterity as great and rich as any Prince that ever ſwayed the Scepter. But theſe were but ſpecious Pretences: for they had already taken the Town of *Portſmouth* by Siege, together with *Dover-Caſtle* by Surprize; and having now borrowed an hundred thouſand Pounds of that Mony that had been raiſed for the Service of *Ireland* (with which the King not long after taxed them in a particular Meſſage) they proceeded to raiſe freſh Forces, till they had compleated an Army of above thirty thouſand Horſe and Foot; whilſt the King's Forces were as yet weak and inconſiderable, for want of Mony to pay them: till going down into the Borders of *Wales*, as far as *Shrewsbury*, and there having ſome Mony lent him, and good ſtore of Plate brought in from divers of the loyal Nobility and Gentry of thoſe Parts, he therewith raiſed ſo conſiderable a Force, that he was ſome time after able to give the Earl of *Eſſex* Battle, as he was marching in purſuit of him towards *London*.

Ruſh. ib. *p.* 769.

Id. *p.* 771.

May's *Hiſt.* &c. *p.* 109.

But I ought to have firſt told you, that on the 25th of *Auguſt* preceding, the King had erected his Standard of War at *Nottingham*, tho he then wanted a compleat Army to encounter the Parliament, till he found means to recruit it, as I have now related: which Particular deſerves your notice, ſince the Parliament declared that this was the beginning of a War againſt them; whereas indeed the War was actually begun ſome months before on their ſide, by *Hotham*'s ſeizing upon and keeping the King out of *Hull*, and by their reducing all other Towns and Places of Strength into their power, and by their Ordinance for the Militia, and ſeizing the Forces of the Kingdom into their own hands, ordering a vigorous Reſiſtance to be made againſt all ſuch as ſhould dare to oppoſe them, by virtue of the King's Commiſſion of Array, as hath been already mentioned. But I cannot omit taking notice, that immediately upon his Majeſty's Arrival at *Nottingham*, he ſent the two Houſes a gracious Meſſage, wherein he told them, that conſidering the many Miſtakes which had ariſen by the Meſſages, Petitions, and Anſwers, that had paſſed between him and the two Houſes of Parliament, and which might be prevented

Ruſh. *p.* 784.

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by ſome other and nearer way of Treaty; he therefore propoſed, that fit Perſons ſhould be enabled on either ſide to treat of and conclude all Differences between them, for the publick Peace of the Kingdom, and farther promiſed all Safety and Encouragement to thoſe that ſhould be ſo appointed by the Parliament; and concludes, That if this Propoſition ſhould be by them rejected, *God would abſolve him from the Guilt of the Blood which muſt be ſpilt.*

Id. *p.* 785. To which the two Houſes returned a very high and poſitive Anſwer, wherein they refuſed to enter into any Treaty till the King had recalled his Declarations, whereby the Earl of *Eſſex*, and both Houſes of Parliament, with all their Adherents and Aſſiſtants, had been declared Traitors, and that his Majeſty take down his Standard; ſince whilſt they remained in that ſtate, they cannot (as they ſaid) by their fundamental Privileges of Parliament, give

Id. *p.* 786. him any other Anſwer. To this the King however ſoon returned a ſhort and fair Reply: Firſt he proteſted that he never intended to declare both his Houſes of Parliament Traitors, or ſet up his Standard againſt them; and therefore to remove all Scruples which might hinder the Treaty he ſo much deſired, he promiſed, ſo that a Day were appointed by them for revoking their Declarations againſt all Perſons as Traitors for aſſiſting him, he would then, on the ſame day, willingly recal all his Proclamations and Declarations, and would alſo take down his Standard in order to a Treaty.

Id. ib. But all that he could obtain from the two Houſes, was, That they could not recede from their former Anſwer; and poſitively inſiſted, that the King ſhould firſt recal his Declarations, and take down his Standard, and leaving his Forces, return to his Parliament, without any thing to be done or yielded to at all on their ſide; ſaying, they would not allow themſelves to be ſet in equal Ballance with thoſe Perſons, whoſe Counſels had ſtill prevailed to hinder the Relief of *Ireland*: and immediately publiſhed a Declaration, that the Arms they were forced to take up for the Preſervation of the Laws and Liberties of the Kingdom, could not be laid down, until the King ſhould withdraw his Protection from ſuch Perſons as had been voted Delinquents by both Houſes, and leave them to the Juſtice of the Parliament.

May's *Hiſt.* *p.* 128. To this the King, within a few days after, made another Reply; the Subſtance of which was, That he could neither do nor offer any more than he had done already, and that he ſhould think himſelf clear and innocent from any Blood that might be ſpilt in this Quarrel, praying God ſo to deal with him and his Poſterity, as he deſired to preſerve Religion, Law, and the Liberty of the Subject, and Privilege of Parliament. The two Houſes Return to this was in effect no more than to repeat their former Anſwer, That whilſt the King thinks himſelf bound in honour to protect ſuch Delinquents, in whoſe Preſervation the Kingdom cannot be ſafe, nor the Rights of Parliament at all maintained; they cannot enter into any farther Treaty with his Majeſty, beſides other reflecting Language; too long to be here repeated. And I have been the more particular in relating theſe laſt Petitions, with their Anſwers, ſince it will from thence plainly appear, how unwilling the King was to enter into a State of War with the prevailing Faction in the two Houſes, who would come to no other Terms with his Majeſty than an Indemnity for themſelves, and a Power to inflict what Penalties they pleaſed on all ſuch as had any ways aſſiſted him in this Quarrel; which was utterly to diſcourage and deter all Perſons, that ſhould go about for the future to aid or protect him from their Inſults and unjuſt Invaſions of his known Prerogatives. Thus did they ſacrifice the publick Peace of the Nation to their own private Malice and Revenge.

I ſhall now draw to a Concluſion, and ſhall but lightly mention the particular Actions of this unhappy War, and what followed thereupon; as the Battels of *Edge-Hill*, *Marſton-Moor*, and *Naſeby*, and other Places, in moſt of which the Parliament-Army obtained compleat Victories, under the fortunate Conduct of their two Generals, the Lord *Fairfax* and *Oliver Cromwel*; till at laſt the King, being reduced to the loweſt Ebb of Fortune, was forced to quit *Oxford*, and fly to the *Scotiſh* Army for Succour: By whom he being ſome time after given up to the Parliament, upon ſuch Terms as had been agreed between them, he was by them confined to ſome of his own Houſes, and upon his Refuſal to paſs ſuch Bills as they offered to him, which were in effect to

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diveſt himſelf of all his Regal Power, they thereupon voted, That no more Addreſſes ſhould be made to him in any kind; which was in effect to diſown him for their lawful King. And tho during the War, as well as after it was ended, there were ſeveral Treaties ſet on foot for the Accommodation of thoſe unhappy Differences between the King and the two Houſes; yet they ſtill proved abortive, through the predominant Humour of ſome leading and factious Men, either of the one or the other Party, who not deſiring to ſee an end of the War, ſtill inſiſted upon higher and more exorbitant Conditions than were fit either for the King or Parliament to grant, with any Honour or Safety to themſelves; as happen'd particularly at the Treaties of *Oxford* and *Uxbridge*, at the latter of which nothing would ſerve the prevailing Parties of both Houſes, but the King's abſolute yielding up the Power of the Militia, and the total Abolition of Epiſcopacy, and the Book of Common Prayer, and giving up all thoſe that had adher'd to him, and aſſiſted him in the preſent War, to be fin'd and impriſon'd, and puniſh'd at their diſcretion.

But when the Presbyterian Faction in the Houſe of Commons was overpower'd by that of the Independent, which was back'd by *Cromwel*, and the major part of the Army, by whom no leſs than eleven Members were forced to quit the Houſe at once, and moſt of them to fly beyond Sea; after this, and that the King had been frightned from *Hampton-Court*, where *Cromwel* and the Officers of the Army had for a time treated him with all ſeeming Freedom and Honour, till he fled to the Iſle of *Wight* in diſguiſe, and there was for ſome Months kept a cloſe Priſoner: but at laſt, whilſt *Cromwel* and his Army were gone into *Scotland*, to reduce the more moderate Kirk-Party there, which under the Conduct of Duke *Hamilton* had raiſed an Army (tho with ill Succeſs) to ſet the King at liberty; then the major or prevailing Party of the Presbyterians in both Houſes ſeeing their Error, and finding their Cauſe deſperate, reſolved to take this opportunity of treating and making a full and final Agreement with the King upon certain Conditions, which however hard and unequal in themſelves, yet ſince they were ſomewhat more tolerable than thoſe that had been before offer'd him, and conſidering in what deſperate Circumſtances his Affairs then were, he was obliged to ſubmit to: and had he done ſo at firſt, he might have, by a ſpeedy coming up to *London*, and joining his Intereſt with that of the Parliament and City, raiſed an Army ſufficient to cope with that which *Cromwel* was bringing out of *Scotland*, which he had now reduced. But whilſt they were inſiſting too long upon ſeveral unneceſſary Punctilio's, the General with his Independent Army, march'd up to *London*, and ſoon put an end to the Treaty by a forcible Excluſion of the major part of the Houſe of Commons, which had voted the King's Conceſſions ſatisfactory; and then the remaining part (not being ſixty in all) upon the Houſe of Lords refuſing to join with them, not only voted them uſeleſs and dangerous, but alſo kept them from meeting any more. After which it was very eaſy for them to paſs an Ordinance for the Trial of the King, by certain Judges appointed for that purpoſe, who both condemn'd him, tho he utterly denied their Power, and likewiſe order'd him (beyond what can be parallel'd in Hiſtory) to be executed at the Gates of his own Palace: all which he ſuffer'd (beſides many other Indignities) with the higheſt Patience and Chriſtian Courage, as became the Greatneſs of the Character he bore.

Now I durſt appeal to your ſelf, whether there be any thing in all the Convention's late Proceedings againſt King *James* that came near this, either in the Original of the Quarrel, the Means of the Proſecution, or laſtly, in the Iſſue and Conſequence of the whole Affair.

M. I muſt confeſs you have given a juſt Account of the Beginning, Progreſs and Cataſtrophe of that unhappy Rebellion, which ended (as moſt of them do when they prove ſucceſsful) with the Depoſition and Murder of the King. And tho I do not deny but there is ſome difference between that and the late Expulſion of his Majeſty from the Throne, yet it is not ſo much as to make it a quite different Caſe, ſince you your ſelf cannot but confeſs, that the Iſſue of both their Votes have been much the ſame; *viz.* the Depoſition, or (as you word it) *Abdication* of the King, and the total *Abrogation* of his Royal Authority. All the difference I can find between them, is, That in the Caſe of King *Charles* I. this was done when his Royal Perſon was in their power; but in that of

the King his Son, it was not voted till after his Departure, or rather his being driven away, since he could no longer stay here with Honour or Safety to his Person; and what they would have done had he continued here, I cannot without Horrour imagine: but it is well it proved no worse, and that they had not the opportunity of expressing their Malice against his Person as well as his Government. Therefore I desire you would now shew me (since you undertake to justify all that the Convention has done in relation to the King) why they might not as well have condemn'd him to death (as the Rump Faction did his Father) as have passed that Vote, *That by his Breach of the Original Contract between the King and People, and by his deserting the Kingdom, he had abdicated the Government, and that the Throne was thereby become vacant:* since I always thought, that it had been sufficiently declared for Law by the Statute of the 12th of *Charles* the Second, which attainted the Regicides of his Father, *That neither the Peers, nor Commons separately, nor yet both of them together in Parliament, nor the People collectively or representatively, have any coercive Power over the Person of the King.* And certainly this was a fundamental Law of the Land from the very beginning of Kingly Government in this Island, notwithstanding the contrary had been preached up, and writ for, by the Leaders of the Commonwealth Faction; and much the like Doctrines have been also spread abroad, and justified of late in seditious Pamphlets and Sermons, tho veil'd over with subtle Distinctions to blind the Eyes of the People. Therefore pray let me see how you can defend this part of the Controversy.

F. I shall observe your Commands; but first give me leave to premise, that tho I will not justify the Deposition of Princes, yet I very much doubt the Truth of what you say, that it was always a fundamental Law of *England*, that the Estates of the Kingdom, or Parliament, *had no coercive Power over the Persons of their Kings, or could pass any Judgment on their Actions:* for that it was not a fundamental Law from the first Institution of the Government, I think I have already given you several Proofs from *Bracton*, and the *Mirror of Justices*, and shewn what was looked upon in those Times to be the Power of the Estates of the Kingdom, as to the restraining the *arbitrary and illegal Actions of the King himself, his Queen, Children, and great Officers of the Crown*; and what the *English-Saxons Wittena Gemots* did in relation to their Kings, upon any notorious Breaches of the fundamental Laws of the Government, or a general Violation of the Liberties and Properties of the People contrary to Law; as you may remember formerly in the Instances of King *Sigebert*, and *Edwy*, and others in the *Saxon* Times: and that the same was held lawful, and put in practice after the *Norman* Conquest (as you call it) is as plain from what two several Parliaments did in the case of two Kings, *viz. Edward* and *Richard* the Second; which Proceedings were also justify'd and confirm'd by the next subsequent Parliaments (as you may find in our Statute-Book) by the Acts there to be seen in the first Year of *Edward* the Third, and first of *Henry* the Fourth; tho I will not justify those Actions neither, nor affirm that Parliaments have the same Power at this day, it having been by them disclaim'd by so many subsequent Statutes.

M. I cannot deny that there are such Statutes as those you mention; but if you please more nearly to consider them, you will find that they were rather made to excuse and indemnify the Persons that had a hand in rebelling against, and deposing those Princes, than at all to justify the Actions themselves; for in that Statute of the first of *Edward* the Third, you will read it is only there enacted and declared, "That none that came over with the King that now is, "and the Queen his Mother, or none other that went with the said King in "aid of them, to pursue their Enemies, in which Pursuit *the King his Father "was taken, and put in ward, and yet remaineth in ward*, shall be impeached, "molested, or grieved in Person, or in Goods, in the King's, or in any other "Court, for the said Facts, nor for the Death of any Man, *&c.* from the Day "of the Arrival of the present King, to the Day of his Coronation." And much to the same effect is that Act of Indemnity passed in the first of *Henry* the Fourth, "That none shall be impeached or punished that assisted that King "to pursue and take *Richard* the Second and his Adherents." So that these Acts were only Pardons to such Offenders, but do no way declare those Actions to be legal, or any ways justifiable by the known Laws of the Land, or fundamental

damental Conſtitution of the Government. And as for the Law at preſent, you know it is expreſly declared by the Act of the 12th of *Charles* the Second, *That not only the Command of the Militia of the Kingdom is his Majeſty's undoubted Right, but that neither of the two Houſes can pretend to the ſame; nor can levy any War, offenſive or defenſive, againſt his Majeſty.* So that I think nothing can be more plain and expreſs, than that the late Proceedings againſt his Majeſty have been altogether unjuſtifiable, and contrary to Law.

F. I do not deny that what you now ſay is in a great part true, and our written Laws do no ways allow any Reſiſtance, or Impriſonment of the King; but however, there are divers Actions, which, tho not juſtifiable by the ſtrict Letter of the Law, yet being for the publick Good, and Preſervation of the Government, and original Conſtitution thereof, and in caſes of extreme Neceſſity, when done indeed, ought to be juſtify'd and pardon'd by ſubſequent Parliaments, as I have already ſufficiently made out: But ſince we have ſo fully diſcourſed of, and, as I thought, ſufficiently ſettled that point at our ninth Meeting, I ſhall ſay no more on that Subject now. And as to what you ſay in relation to the late Proceedings of the Convention againſt the King, I have likewiſe ſo fully anſwer'd all that you could alledge to the contrary at our eleventh Converſation, that I need not here make repetition; only give me leave to add, That if the two Houſes of Parliament have no power to cenſure, and paſs Judgment upon the notorious illegal Actions of the King and his Miniſters, the Inſtitutions of thoſe great Councils are altogether in vain; ſince it was acknowledged by King *Charles* the Firſt, in his Anſwer to the Nineteen Propoſitions already mention'd, *That Parliaments had ſufficient Power to reſtrain Kings from Tyranny:* but this is always to be thus underſtood, provided they exerciſe this Power rightly, and as they ought, for due and weighty Cauſes, and not vent their own private Reſentments and Revenge upon the King or his Miniſters, for ſlight and trivial Occaſions.

M. Admit I ſhould grant it, yet you and your Party would gain little by that, ſince the Law ſtill ſuppoſes the King can do no wrong; and all Acts that are illegal are not to be looked upon as his, but thoſe evil Counſellors and Miniſters that preſumed to do them, and who are alone to ſuffer for them, the Perſon of the King being always ſacred and unpuniſhable: and if it hath at ſome times happen'd otherwiſe in point of fact, it is by no means to be juſtify'd, or drawn into example. But indeed this Revolution is in one thing very ſingular, and without any Example, *viz.* That whereas in all former Depoſitions of Princes, the Indignation of the People has fallen more ſeverely on the publick Miniſters and Officers, by whom any Actions, ſuppoſed to be illegal and arbitrary, had been done, than on the Perſon of the King himſelf; as any one that reads the Hiſtories of *Henry* the Third, *Edward* the Second, and *Richard* the Second, may obſerve: while in this Revolution that has lately happen'd, the King himſelf hath been almoſt the only Sufferer; and his evil Counſellors, and corrupt Miniſters and Judges, have all eſcaped ſo much as any publick Sentence or Puniſhment: which either ſhews, that what they had done was juſtifiable according to Law, or elſe that the Convention was very partial to thoſe Offenders.

But to conclude, and return to the point in queſtion: If the Long Parliament could not legally call King *Charles* to any account for what he had done contrary to Law (as your ſelf ſeems to grant) I deſire you to ſhew me any ſufficient Reaſons why it ſhould be treaſonable for the Long Parliament to paſs a Vote, That the King's raiſing a Guard at *York*, was in order to make war upon the Parliament, and a Breach of the Truſt repoſed in him, contrary to his Coronation-Oath, and tending to the Diſſolution of the Government: and yet that the Convention's voting, That King *James* the Second, by the Breach of the Original Contract between him and his People, and by withdrawing himſelf out of the Kingdom, had abdicated the Government, ſhould be looked on as legal, and according to the juſt Power of Parliaments. So that you muſt acknowledge, that the Long Parliament were inveſted with a Power of cenſuring the King and his Actions, and calling him to an account for them; and if they had, then the Caſe of King *Charles* the Firſt, and King *James* his Son, will be much alike. But if the Long Parliament had not that Power, neither ought the Convention to have exerciſed it over the Actions of the pre-

ſent King. And pray, Sir, tell me why the Rump Parliament ſhould be guilty of Treaſon, for appointing Judges to try and condemn King *Charles*; and the Convention ſhould be innocent, who have as good as depoſed King *James*, *by declaring him to have abdicated the Government, and that the Throne is thereby become vacant*: ſince I ſuppoſe, that this Convention, tho of all the Eſtates of the Kingdom, meeting and acting without the King's Writ, hath no more (if ſo much) Authority as that fag-end of a Parliament which murder'd King *Charles*, and yet met at firſt by his Writ.

F. I hope, Sir, then, if I can give a ſatisfactory Anſwer to theſe your laſt Queſtions and Objections, you will come over to my Opinion. In the firſt place I own, and I think you your ſelf muſt grant, that Parliaments have a Power of impeaching and puniſhing ſuch evil and corrupt Miniſters, as ſhall preſume to act any thing contrary to *Magna Charta*, and the known Liberties and Privileges of the Nation, tho they did it by the King's expreſs Commands; ſince they are preſum'd to know the Law, and either ſhould have refuſed to accept their places upon unjuſt and unwarrantable Conditions, or elſe have reſign'd them, rather than obey'd the King's illegal Orders. But it is yet a higher Aggravation of the Offence, if (as ſome of our Judges of late) they accept of thoſe Offices on condition to give their Judgment in point of Law, only as the Court ſhall direct: So that the difference between us barely lies in the true Senſe and Meaning of this Maxim in Law, *That the King can do no wrong*; or if he do any in his own Perſon, how far he is liable to anſwer for it. I grant indeed, That if the King never executes any Function of the Government in his own Perſon, he cannot be ſaid to do any wrong, but only thoſe his Miniſters and inferior Officers that act by ſuch Orders: yet what if the King himſelf will act miniſterially, and will take upon him in Perſon to ſeize thoſe that are innocent of every thing but his arbitrary Deſigns; or what if he will himſelf put the Broad Seal to a Pardon of a notorious Enemy to the Government, that ſtands impeach'd by the Commons of *England*; can any one ſay that this is not a doing wrong in his own Perſon? What if he will turn his Chancellor, Chief Juſtices, and other Judges out of their Places, and will not admit of any new ones, but ſuch as will ſacrifice their Conſciences, and blindly promiſe to act and give Judgments according to whatever he ſhall pleaſe to ſet up for Law? Or ſuppoſe he do in his own Perſon ſign and iſſue out Orders for a ſtanding Army in a time of Peace, not to defend and preſerve, but to enſlave the Nation: or ſuppoſe that being petition'd to, and deſired by ſome of his Peers, who are *Conſiliarii Nati*, to abſtain from making ſuch notorious Breaches upon the Conſtitution, he ſhould immediately order under his own hand the Petitioners to be clapt up in the Tower; can the Governors of that place judge whether the fault thoſe Lords ſtand committed for be Treaſon, or only High Miſdemeanor? Or laſtly, ſuppoſe the King ſhall either refuſe to call a Parliament to redreſs theſe Grievances; or if he goes about to do it, ſhall evidently in his own Perſon cloſet and corrupt the intended Members of it, what muſt be done in ſuch caſes, when all other Remedies fail? And how many of theſe Acts and Breaches upon the Law the late King was in his own Perſon guilty of, I ſhall not now particularly enquire into, having already ſpoke ſufficiently upon theſe Points? And I wiſh you, or any body elſe, could excuſe him from theſe perſonal Violations. I would farther ask you, what is to be done when he will hearken to no Advice and Remonſtrances that ſhall be offer'd to him, to make him ſenſible that ſuch Proceedings ſtrike at the very fundamental Conſtitution of the Government? I ſay, what Courſe ſhall the whole Nation, or Parliament, as its Repreſentative, take in ſuch caſes where the King will remain incorrigible, and will not retract what he hath done, or repair thoſe Breaches he hath made upon the Laws?

M. I know no other Remedy, but ſtill to apply themſelves to him by Petition; and if Prayers and Tears will not do, then to obſerve *Bracton*'s Rule, That if the King will not be amended, *expectet Deum ultorem.*

F. Truly I expected ſome ſuch ſort of Anſwer from you to theſe Queſtions: But pray tell me, what if the King is reſolved ſtill to prove inexorable, and openly to declare by all his Words and Actions, that he will govern arbitrarily by a ſtanding Army, and doth put it in practice accordingly; do you allow the People no Remedy in that caſe, but only Prayers and Tears? For

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what ſatisfaction is it to me, my Prince's expecting the Vengeance of God for the Breach of his Coronation-Oath? Will that prove any Alleviation of the Subjects Miſery, that their Prince will be damned in another World, when perhaps he himſelf may not believe any ſuch thing as a Life after this? For he may be told by his Prieſts and Jeſuits, that it is a commendable and meritorious Action in him to make himſelf abſolute, and to trample all the Laws of his Kingdom under his feet; ſince otherwiſe he can never ſet up the *Romiſh Religion*, which upon their Principles is the only way to Salvation, and that it is lawful for him to uſe any means to compaſs it. So that unleſs you will ſuppoſe all Governments ought to be abſolute and arbitrary, at the Will of the King, I do not ſee any means left the Subjects how to ſecure themſelves from the rankeſt Tyranny.

M. To deal plainly with you; it is ſtill my firm and ſteady Opinion, That if the worſt Caſe which you have here put ſhould happen, it is better for the People to rely upon God's Providence, what ſhall become of their Perſons, Religion, and Liberties, than to provoke his Wrath by any Rebellion, or Reſiſtance of the King or his Officers: ſince I do not think that even the Defence either of our Religion, or of thoſe Liberties and Privileges which have been granted by our former Kings to the Subjects of this Nation, can ever be counterballanced by a Rebellion and long Civil War; for beſides the preſent Calamities which it certainly brings along with it, it commonly ends in the Deſtruction of the King's Perſon, if not the Expulſion of the Royal Line and Family; as we have ſeen lately in the Flight of the Queen with the Infant Prince, which was follow'd with that of the King: rather than which I think any thing, even Perſecution it ſelf for Religion, were better to be endured by us, than a Remedy worſe than the Diſeaſe.

F. I am ſorry you and I have diſcourſed ſo long, and ſo often about theſe matters, without being able to make each other any whit wiſer, and that you are ſtill ſo obſtinate in your firſt Opinions; I muſt therefore beg your pardon that I cannot be of your mind, ſince our Principles are ſo different, you ſuppoſing that no Reſiſtance of a tyrannical illegal Power, if carried on under the Name and Authority of a King, can be in any caſe lawful for the People or Subjects, let what will be the Conſequence; whilſt I (who believe the People were not made or ordain'd by God only for Kings to uſe them as their Slaves, or mere Brutes) am perſuaded, that for the Preſervation of their natural and civil Liberties and Properties, confer'd on them by the very Conſtitution of the Government, not by the mere Grace and Bounty of former Kings, as ſome of your Party affirm (and therefore of which the whole People can be the only proper Judges) they may not only take up Arms, but drive out ſuch a Tyrant that ſo invades them, if they are able of themſelves to do it, or elſe may beg the Aſſiſtance of any other neighbouring Prince, that will be ſo generous as to undertake their Cauſe. Otherwiſe I can ſee no Remedy, but that all Kings, how limited ſoever, may make themſelves not only abſolute Monarchs, but their People as abſolute Slaves as thoſe in *Turky* or *Muſcovy*. And I am ſo much a Patron of Liberty, that I cannot think any of the Conſequences you mention, ſuch as a long Civil War, or the Expulſion of a tyrannical Prince, can be worſe than conſtant Slavery, Ignorance, and Poverty, which are the certain Conſequences of your Hypotheſis, of leaving all Princes to diſpoſe of the Eſtates, Lives, and Liberties of all their Subjects at their pleaſure. And tho I own that War, and the loſs of thouſands of Lives, may happen in the defence of them, yet this State is rather ſometimes to be prefer'd (if it cannot be avoided) than the other; as any Man, I think, would, if it were put to his choice, rather have a Fever once in ſeven Years, and come off with Life, than languiſh under an Ague or Conſumption for the like ſpace of Time, and die at laſt; ſince that Saying of the Poet is very true, *Non eſt vivere, ſed valere Vita.* And now this Parallel ſeems very juſt, without making any particular Application of it.

But to return to the matter in hand; to which, what I have juſt now ſaid, has been only preliminary; I ſhall as freely own on the other ſide, that it may ſo happen, that a whole People, or the major part of them, or the Eſtates of the Kingdom, or Parliament, or at leaſt the major part of them, may entertain unjuſt Prejudices againſt the King; and by paſſing too hard a Cenſure on his

his Actions, may, by the Artifices of factious and ill Men, be drawn into Rebellion, and to take up Arms againſt him without any juſt Cauſe: and in this caſe, ſince there is no ſuperior Power between him and his People, he only can be Judge, and the Appeal muſt then be made to God, and the Conſciences of all his good Subjects, that remain ſtill untainted, and will be ready to aſſiſt in maintaining his juſt Rights; or he may alſo in ſuch caſes implore the Aſſiſtance of ſome neighbour Prince, provided he take care that the Auxiliaries he ſhall afford him may not prove ſo powerful as to make themſelves Maſters of the whole Kingdom and Nation; as we often find in Hiſtory to have been the Event of ſuch foreign Aſſiſtances.

Theſe things being premiſed, I think it not at all difficult to anſwer your Queries: As firſt, why the two Houſes of Parliament could not juſtly or legally call King *Charles* to an account for what he had done contrary to Law; and ſecondly, why it ſhould be treaſonable for them to paſs a Vote, that the King's raiſing a Guard at *York* was in order to make war upon the Parliament, in breach of his Coronation-Oath, and contrary to the Truſt repoſed in him. And yet that the Convention's voting that King *James* the Second, by the Breach of the *Original Contract*, and by withdrawing himſelf out of this Kingdom, had *abdicated* the Government.

Now to anſwer your Queries in order, I ſhall let you know, that, in the firſt place, I utterly diſavow all *coercive Power* in one or both Houſes of Parliament, to call the King to an account for any Actions committed by himſelf, or his ſubordinate Miniſters or Officers; and therefore all the Proceedings of the Rump-Parliament againſt King *Charles* were abſolutely void and illegal, not only from the Incompetency of the Authority, they being but the fag-end and remainder of the Members of that Parliament, and without any concurrence of the third Eſtate, or Peers of *England*; who (tho at that time excluded by force, yet) have always had a joint Power with, if not ſuperior to that of the Commons, in all ſuch caſes of the higheſt importance: but indeed becauſe both Houſes are the King's Subjects, and call'd by his Writ, and have ſworn Allegiance to him, therefore they could not paſs Judgment upon him as a Criminal, ſince he was ſtill their Sovereign; neither could they proceed againſt him as an Enemy, becauſe by the whole Narrative of theſe Tranſactions it appears, that he was unwillingly drawn into that unhappy War, and acted only upon the Defenſive, in maintenance of his juſt Right of the Militia, and other Prerogatives of the Crown, which a prevailing Faction in both Houſes would then have deprived him of againſt his Conſent.

This being ſo, the other part of the Queſtion is eaſily anſwer'd, why the Convention's Proceedings againſt King *James* ſhould be juſtifiable, and not thoſe of the Rump-Parliament againſt his Father, ſince the Inſtances are by no means parallel; for the Convention did in no wiſe take upon them to judge or paſs Sentence upon the King, as one accountable to them for his Actions: for they only gave their Vote or Cenſure upon what he had done, as that which had already diveſted him of all Right to the Crown, and in effect imply'd an abſolute *Abdication* of the Government. And I have already proved in our former Converſation, that when a King plainly declares by his Actions, that he will no longer govern by Law, and refuſes to amend the Breaches that have been made by his ſubordinate Miniſters, he thereby himſelf becomes anſwerable for thoſe Miſcarriages. And tho I grant his Perſon is ſtill unaccountable and unpuniſhable, for want of a ſuperior Power to condemn him; yet he may ſo carry himſelf towards his People, in viſibly going about by force to ſubvert the Religion and Laws, that upon his obſtinate Refuſal, or wilful putting himſelf out of a Capacity to amend thoſe Breaches he himſelf hath made, or at leaſt his inferior Miniſters by his Order, he may thereby forfeit and loſe the very Crown it ſelf, and all Right to govern any longer: but ſtill (as I have formerly ſaid) this wholly proceeds from his own exorbitant Actions, and not from any coercive Authority the Parliament can pretend to over his Perſon. Thus for example, if in the State of Nature, a Husband carry himſelf ſo cruelly towards his Wife, as that ſhe can no longer live in ſafety with him, ſhe may lawfully quit his Bed and Family, and provide for her own ſafety ſomewhere elſe; after which, I doubt not but in that ſtate the Bond of Matrimony is thereupon diſſolved: and this not from any Authority the Wife has over

the

the Perſon of her Husband, but from the great Law of Nature, of *Self-Preſervation*; or elſe it would lie in the power of any Husband to tyrannize, nay to murder his Wife whenever he pleaſed, and ſhe could have no Remedy left to provide for her own Safety. The caſe is ſo plain between the People and a tyrannical Prince, that I think it needs no farther inſiſting upon, than to apply what I have now ſaid in general to King *James* himſelf in particular: And I ſhall but lightly touch upon this Head, having at our eleventh Converſation fully proved, that the King's late Actions and Proceedings, mention'd in the Prince of *Orange*'s Declarations, eſpecially that of his aſſuming to himſelf a Power of diſpenſing with all Laws, were Breaches of the *Original Contract* between the King and his People: and that there is ſuch a Contract, I think I have ſufficiently proved at our tenth Meeting; and if ſo, what the King hath done tended to a Diſſolution of the Government, and not being redreſſed, gave the People a Right of Reſiſtance by Force to ſuch illegal Judgments and Commands. And tho I grant, ſo long as there are any hopes left that the King would deſiſt from, and redreſs thoſe Violations, he ought not to ſuffer either in his Perſon or Dignity, but only thoſe that aſſiſted him in thoſe exorbitant Actions, ſince the King's Perſon ſhould always be ſacred and unpuniſhable; yet when he plainly declares, that he will not redreſs them, and puts himſelf out of a Capacity of doing it, by leaving the Kingdom without offering any Satisfaction for what he has done, nay, doing his utmoſt to leave the Nation in a ſtate of Anarchy and Confuſion: if this be not an implicit *Abdication* of the Government, when the King thus abſolutely refuſes to govern any longer upon thoſe Terms and Conditions on which he has received the Crown, I know not what can be reckoned one, unleſs you would have an expreſs *Abdication* or *Renunciation* of it, which I ſuppoſe cannot be expected in this caſe. And if the Convention of Lords and Commons upon their Meeting have paſſed their Votes that it was ſo, it does not therefore follow that their bare voting ſo, can make it ſo, if it were not ſo before. However, you muſt own that it is a ſolemn Declaration of the Senſe of the Repreſentatives of all the Eſtates of the Kingdom, and ought to be acquieſced in, and ſubmitted to by all the Subjects of it, unleſs you can ſhew me better Reaſons to the contrary than you have hitherto done. So that after all your aggravating Expreſſions, this Vote of theirs did not at all touch the Perſon of the late King, nor yet deprive him of his legal Authority, ſince he had already done ſufficient to forfeit and diveſt himſelf of it: And if he hath happen'd to be the greateſt Sufferer in this *Revolution*, and that his evil Counſellors, corrupt Miniſters and Judges, with other inferior Officers, have eſcaped Cenſure and Puniſhment, this hath fallen out from the Iniquity of the Times, and the great multitude of Offenders who have been engaged in the ſame bad Cauſe, and partook of the ſame Guilt with the Papiſts themſelves: And you know very well in what manner, by the tacit Conſent of two prevailing Factions, thoſe Offenders came to eſcape. But I hope the Votes of the Convention will however ſtand as a perpetual Landmark and Boundary, to warn all ſubordinate Officers for the future not to break in upon the Liberties and Privileges of the Nation, leſt a worſe thing befal them.

But to come to your laſt Objection: The Incompetency of Authority in the Convention to cenſure the King's Actions, which becauſe they did not meet upon the King's Writ, you will needs fancy that they had no more Right to ſit or act than the Rump-Parliament, when all the reſt of the Members were ſecluded, and the Houſe of Lords voted uſeleſs. This is indeed a great miſtake, and which you could not have fallen into, had you conſider'd as you ought, that the People and their Repreſentatives, the Eſtates of the Kingdom, were before Kings in this Nation, who often owed their Crowns to their Election, as I have already proved at our fifth and twelfth Converſations; to all which I did not find you had any thing conſiderable to return by way of Anſwer: and that upon all manner of Emergencies and Revolutions of Government, the Eſtates of the Kingdom, or Parliament, have always exerted their Authority, either without any Writ or Summons from the King, or elſe have ſat after the Kings who call'd them had reſign'd their Crowns, and abdicated the Government. And to give you Inſtances of this, I ſhall begin with the great Council of Parliament at *Running-Mead*, conſiſting of all the Nobility and People of *England*, in which *Magna Charta* was firſt granted: and tho it was not call'd by

King

King *John*, yet it was by him acknowledged for a lawful Assembly of the Estates of the Kingdom, as you may see in *Matt. Paris:* and pray also consult *Matthew* of *Westminster*, and *Walsingham*'s Chronicle; and you will there find, that upon the Decease of King *Henry* the Third, the Estates of the Kingdom met in a Great Council at *Westminster*, by their own Power and Authority, and there solemnly recognized his Son *Edward* the First (who was then, as they supposed, in the Holy Land) his Title to the Crown, and order'd him to be proclaim'd King, when as yet they knew not certainly whether he was alive or dead. And when his Son *Edward* the Second was deposed in Parliament, and had also solemnly resign'd his Crown to his Son *Edward* the Third, the same Parliament that had deposed the former King, sat and acted without any fresh Summons under the new one, and there passed several Statutes, as you find in *Rastal* or *Keeble*. And the like happen'd upon the Deposition and Resignation of *Richard* the Second; the same Parliament that deposed him sat some time after under *Henry* the Fourth, and there were divers Statutes passed (as there were also in the first Parliament of *Edward* the Third) which are accounted good Laws at this day, without the Confirmation of any subsequent Parliaments, as you may see likewise in the Statute-Book, and Parliament-Rolls themselves. So that when our Great Council have once met on such absolutely necessary Occasions, it is not the Authority that calls them, but their own inherent Right and Power from the Constitution of the Government, that gives sufficient Sanction to their Proceedings. I did, as I remember, at our last Meeting but one, slightly mention these two last Instances upon another Occasion; but since they now serve for my present purpose, pray pardon me if I take the liberty to put you in mind of them again.

M. I confess you have given divers specious Instances of the independent Power of Parliaments upon any great Emergencies and Revolutions of Government; but yet I have very much to except against most of them. As for the first Instance, of the Great Council at *Running-Mead*, I have long since told you my Opinion of it, that it was a riotous and unlawful Assembly, met there against the King's will; and tho I am not for abrogating the *Great Charter*, since it has been so often confirm'd by the voluntary Sanctions of so many succeeding Kings, yet I must freely tell you, I think it was obtain'd by mere Force and Rebellion at first. Indeed your next Instance of the Assembly of Estates that met to recognize *Edward* the First, is more to your purpose; but then I pray consider, that this was in a case of absolute Necessity, in the absence of the King, and for the publick Peace and Quiet of the Nation, to settle the Government in good hands till his Majesty's Return. And admit I should grant such a way of proceeding may be good for the doing of a necessary and lawful Act; yet it does not therefore follow that a Convention shall have power to make Laws without a King, much less to censure his Actions, and actually depose him. Therefore give me leave to tell you, as you your self cannot justify the two Houses of Parliament in their deposing King *Edward* and *Richard* the Second, so neither can their sitting and acting under their Successors be defended, according to the strict Rules and Customs of Parliament; because they were summon'd by their Writs to *meet*, *consult*, and *act* with the King that call'd them, and none other; and when he either resign'd the Crown, or deceased, their Authority was likewise at an end.

F. I shall not only answer the Objections you have now brought against my Instances from matter of fact, but shall, I hope, confirm them with such fresh ones as you will not be able to answer. First then, as to what you object against the Validity of the Great Council at *Running-Mead*, I think it will not answer the end for which you bring it; since I have already, in our ninth Conversation, sufficiently vindicated the Legality of that Assembly: And give me leave now to add, that both the Legality of that, and the Charter then granted, were sufficiently asserted by King *Henry* the Third's confirming, or rather new granting of it in the first Year of his Reign, by the Advice of his Uncle *William* the *Mareschal*, Earl of *Pembroke*, and *Guallo* the Pope's Legate; who plainly found, that even those Noblemen and Gentlemen that took part with the young King against Prince *Lewis* of *France*, would never be contented till it was done. And tho the same King *Henry* often confirm'd this Charter, as did also his Son *Edward* the First, yet it was not because their first Confirmations

tions were not valid and ſufficient, but from the want of their being obſerved as they ought to have been, by reaſon of the frequent Breaches that had been made upon it, either by thoſe Kings themſelves, or their evil Counſellors and corrupt Miniſters; from whence, upon every notorious Violation of it, the Eſtates of the Kingdom were not ſatisfied till they had, by giving the King freſh Subſidies (as you will find mention'd at the end of thoſe Charters) procured new Confirmations of that Charter, as alſo of that of Foreſts; and thoſe often fortified with dreadful Excommunications denounced by the Biſhops againſt all thoſe that ſhould for the future preſume to infringe them: yet all this was ſcarce ſufficient; ſo prevalent were evil Counſellors in thoſe days (as well as ours) over our Kings, and ſo great Temptations did they find often to violate them.

As for what you ſay in mitigation of my Inſtance of the Great Council that met without any Summons from the King, to recognize King *Edward* the Firſt, you have granted as much as I would have; which is, That ſuch an Aſſembly is juſtifiable, *when the publick Neceſſity and Peace of the Nation require it*: Nor do I my ſelf maintain or deſire any more; but then I do not give the Eſtates of the Kingdom a Power upon every turn to meet, whether the King will or not. Yet certainly, upon ſuch great and extraordinary Occaſions, they had, and ſtill have ſuch a Power to aſſemble, and act as a Parliament, and to make Laws too, notwithſtanding they were never call'd by the King's Writ at firſt. Beſides the Precedents of the firſt of *Edward* the Third, and firſt of *Henry* the Fourth, already mention'd; and againſt which you have nothing to urge, but the Law and Cuſtom of Parliaments at this day; which does not hold neither, ſince even in our own Memory (as I told you once before) the Convention that recall'd King *Charles* the Second, paſſed the Act of Oblivion, and made many other Statutes. And tho it is true that they were confirm'd by the following Parliament, yet that thoſe Acts had been good without any ſuch Confirmation, appears by ſeveral private Acts which were then paſſed, without ever being confirm'd at all, and yet are ſtill acknowledged to be good Statutes at this day.

And that this independent Power of the Great Council of the Eſtates of the Nation, is not peculiar to *England*, but has alſo formerly been in uſe in other neighbouring Kingdoms, whoſe Princes are now looked upon as abſolute Monarchs; I have already proved * from ſeveral Inſtances both in *France*, *Spain*, and other Countries: as in particular that Great Aſſembly which met upon the Death of King *Charles* the Fair, to determine to whom the Right of the Crown then belonged, whether to our *Edward* the Third, or *Philip* Count of *Valois*, who both laid claim to it; and upon ſolemn hearing of the Commiſſioners of both the Competitors, the Eſtates adjudged the Crown to the latter as right Heir, by virtue of the *Salique* Law, tho further removed in Blood than King *Edward* from the King that laſt deceaſed. The like Deciſion I alſo told you the Eſtates of the Kingdom of *Caſtile* made between the pretended Daughter of *Henry* the Impotent, King of *Caſtile*, and his Siſter *Iſabella*, who was afterwards married to *Ferdinand* King of *Aragon*; when upon a ſolemn hearing of the whole matter, the Eſtates adjudged the Crown to the Princeſs *Iſabella*, and ſet aſide a Daughter the Queen had by a Favourite, as Illegitimate. And I have again mention'd this piece of Hiſtory, becauſe it comes neareſt to the preſent Caſe, concerning the Prince of *Wales*; for who ſhall judge of his Legitimacy, if there appear any thing ſufficient againſt the Reality of his being born of the late Queen, but the Parliament, or Great Council of the Nation? which I am ſure you cannot as yet accuſe of any Partiality in this Affair.

* Vid. *Dialogue* 11.

M. I am ſatisfied, from the Authorities you have brought, as well as the Reaſon of the thing, That in caſe the Title to the Crown is any way diſputable, that the Great Council of Eſtates ought to judge of it, in all Kingdoms where there are any ſuch Aſſemblies. But I think the Caſe of this young Prince's Legitimacy to be ſo clear and indiſputable, that there can be no juſt occaſion for any ſuch Trial. However, if there ſhould appear any ſuch Neceſſity, I ſuppoſe the King and Queen, his Parents, would not be againſt the putting the Deciſion of this Matter to a Free Parliament, conſiſting of thoſe of the true Church of *England*, and not of *Whigs* and *Fanaticks*. And as for the Power of the Eſtates to meet on other neceſſary Occaſions, ſuch as recognizing their lawful Prince, I ſhall not oppoſe that neither; tho I do not thereby allow them

an unlimited Power of deposing Kings, or of putting the Crown on what Head they please, to the prejudice of the right Heirs by Blood.

F. I am glad you and I are so far agreed in the main; tho I cannot but observe, that you are under a very great Mistake, in limiting the Power of the Estates of any Kingdom, only to the bestowing of the Crown on those you call the *Right Heirs:* for pray tell me, who can better judge of this than they? And might not the Estates of *France*, if they had so pleased, have adjudged the Crown to King *Edward*, as well as to *Philip* of *Valois*; and had not then all the Subjects of that Kingdom been obliged to acknowledge him, notwithstanding their pretended *Salique* Law? But the Estates of the Kingdom, or Parliament in *England*, have a higher Power; for it is enacted by the Statute of the 11th of *Henry* the Seventh (which I have already cited, tho on another account) *That no one whatever, who shall serve the King for the time being in his Person, or shall yield him true Allegiance for the same, either by serving him in his Wars, or elsewhere, shall suffer any Attainder or Forfeiture for so doing.* Where you may easily take notice, that the Intent of this Statute is to indemnify the Subjects of *England*, who shall assist and serve the King for the time being (let his Title be what it will.) Now how can the Subjects of this Kingdom distinguish or judge who is lawful King, or has the best Title to the Crown, but by the Judgment and Recognition of their Representatives, the Estates of the Kingdom? Nor is there any difference in this Case between an Act made by a King *de Jure*, and one that is only so *de Facto*; for you can't deny that King *Henry* VII. before his Marriage with the Princess *Elizabeth*, was any other, and after her Death he could be no better: and upon your Principles likewise, Queen *Elizabeth* her self had no more than a Parliamentary Title; and yet she made an Act in the thirteenth year of her Reign, That the King or Queen, with the Consent and Authority of Parliament, might limit and alter the Succession of the Crown as they thought fit; which Act I have prov'd to you, at our last Meeting but one, to be still in force: and I now repeat it, to refresh your Memory, and let you see that this Revolution, and the present Limitation of the Crown, is justify'd by both those Statutes; and does not only differ in the Original and Prosecution of the Quarrel, from the Civil War begun and carry'd on by the Long Parliament, but also in the Issue of it; that ending, not only with the Deposition and Murder of the King, and the setting up of a Commonwealth, but with the Expulsion of the whole Royal Line, and the Destruction of the Church and Episcopal Government; whereas it is now (God be thank'd) quite otherwise: for tho King *James* be declar'd uncapable to govern, yet the Convention has thought fit to place the Crown on the Heads of his Son-in-law and Daughter, whom they look'd upon to have most Right to it. And as for the Church of *England*, all things remain in the same State as they were in King *Charles*'s Reign, and I hope will continue so, or rather be reform'd for the better: and therefore I think I have sufficiently justify'd the present Revolution from your Objections, and shewn you, That an old Cavalier, or true Son of the Church of *England*, may very well approve and comply with this present Change; and yet at the same time keep the 30th of *January* without any Hypocrisy; and may also still maintain, that the cutting off King *Charles*'s Head was a horrid Murder and Treason in those that were guilty of it.

M. As for the Conclusion of your Speech, I wholly agree with you, but not in the Premises: for tho the Crimes the Nation is guilty of in one Case, are not so horridly cruel and barbarous as in the other; yet certainly no good Subject can justify the taking up Arms against the King upon any pretence whatsoever, much less presume to declare, *That he hath violated (I know not what) Original Contract, and that the Throne thereby is become vacant*; and then placing any one therein, but him whose Right it is: since I look upon the Oath of Allegiance of perpetual Obligation upon all those that have taken it, not only to his present Majesty, but the Heirs of his Body begotten; so that you may keep the Thirtieth of *January* as much as you please: yet I doubt you cannot excuse those of your Party that have been the Contrivers and Abettors of this Revolution, from much the like (tho I will not say the very same) Crime, with that of the Rump-Parliament. And as to what you say concerning the present flourishing Condition of the Church, and your Hopes of the farther Reformation of it, I wish I could see it; tho I cannot now expect it,

as things are like to go; ſince ſome of her Members have, by the taking up Arms, and joining with the Prince of *Orange*, given the Enemies of our Religion a great advantage over them. And what will become of the Church, when the Archbiſhop of *Canterbury*, and all other conſcientious Biſhops and Clergymen, ſhall be deprived for not taking the Oath to the preſent Government, I dread to think; for I can foreſee nothing but a moſt fearful Schiſm, like to be the Conſequence of that Act.

F. I thought I had ſufficiently proved in our former Converſations, that taking up Arms in defence of our Religion and Civil Liberties, when no other Remedy could prevail, was not unlawful, according to our Conſtitution. Secondly, That there is ſuch a thing as an *Original Contract*, however ignorant you are pleaſed to make your ſelf of it. Thirdly, That by the *Abdication*, or Forfeiture of King *James* (call it which you pleaſe) the Throne did really become vacant; and that it is legally filled by their preſent Majeſties. That the Oath of Allegiance is of perpetual Obligation, I alſo grant; but it is ſtill on condition, that the King ſhall likewiſe truly keep and perform that part of the Contract contain'd in his Coronation-Oath, without going about to alter and invade our Religion and Civil Liberties by an armed Force, and arbitrary Power: and if this were not ſo, we ſhould owe it wholly to the King's mere Favour and Goodwill, if he did not make us all *Papiſts*, nay *Turks* and *Slaves*, whenever he had a mind to it. Theſe are indeed the Principles I have all along maintain'd, and I hope I ſhall never have occaſion to be aſhamed of them; therefore ſince it now grows late, and that I find it impoſſible to make a Convert of you, and bring you over to my Opinion, I will bid you good-night, and part as much your Friend as before: for I am ſatisfy'd of your Sincerity, and that it is only Prejudice, or a miſtaken Zeal, and too ſcrupulous a Conſcience, that hinders you from coming over to our ſide.

M. I thank you for your kind Thoughts of me; and in Return can only tell you, that I think your Error proceeds from much the ſame Cauſes as you ſuppoſe mine does, only I wiſh I could add that of a too ſcrupulous Conſcience: however I am obliged to you for the Benefit of this Evening's Converſation, in which I muſt own I have received a great deal of light in many things which I was before ignorant of; and ſo I take my leave, and ſhall continue your real Friend and Servant.

FINIS.

An Alphabetical

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